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Supreme Court of the United States coroner than 1915

No. 27

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LIPES OF SOUTHERN PACIFIC COMPANY (AN UNINCORPORATED ASSOCIATION), PETITIONER,

SOUTHERN PACIFIC COMPANY AND GENERAL GRIEVANCE COMMITTEE OF THE BROTHER-HOOD OF LOCOMOTIVE FIREMEN AND ENGINE-MEN (AN UNINCORPORATED ASSOCIATION)

No. 41

GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (AN UNINCORPORATED AS-SOCIATION), PETITIONER,

98.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE SOUTHERN PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, ETC. ET AL

OF WEITS OF CERTIFICARY TO THE UNITED STATES CINCUIT COURT OF AFFEALS FOR THE NINTH CIRCUIT

PRINTING FOR CERTIONARI FILED APRIL 13, 1942.

United States

Circuit Court of Appeals

For the Rinth Circuit.

GENERAL COMMITTEE OF ADJUSTMENT
OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC
LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association,
Appellant,

VS.

SOUTHERN PACIFIC COMPANY, a corporation, and GENERAL GRIEVANCE COM-MITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINE-MEN, an unincorporated association,

Appellees.

Transcript of Record

In Two Volumes
VOLUME I

Pages 1 to 488

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Southern Division of the United States District Court for the Northern District of California.

Civil Action, File Number 21301 L

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMO-TIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COM-PANY, an unincorporated association,

Plaintiff.

VS.

SOUTHERN PACIFIC COMPANY, a corporation,

Defendant.

COMPLAINT FOR DECLARATORY RELIEF

- 1. The action arises under a law regulating commerce (28 USC Sec. 41, eighth), to-wit, the Railway Labor Act (45 USC Sec. 151, et seq.), and seeks a declaration of the rights and other legal relations of the parties hereto (28 USC Sec. 400) and further relief, as hereinafter more fully appears.
- 2. Defendant is, and at all times herein mentioned has been, a carrier within the meaning and scope of said Railway [1*] Labor Act, i. e., it is a common carrier engaged in the transportation of pas-

^{*}Page numbering appearing at foot of page of original certified Transcript of Record.

sengers and property by railroad among the States of Oregon, California, Arizona, New Mexico, Texas, Nevada and Utah. A portion of said railroad is a separate operating unit called Pacific Lines, with termini at Portland, Oregon, San Francisco, California, Ogden, Utah, and El Paso, Texas, and with many branch lines.

There is, and continuously for many decades there has been, a craft or class of locomotive engineers, now numbering approximately 1500 employees, in the service of defendant as such carrier on and throughout said Pacific Lines (excluding only therefrom small portions known as "former El Paso and Southwestern System" and "Phoenix Division of former Arizona Eastern Railroad"), which craft or class ever since the enactment of said Railway Labor Act has been recognized by defendant as a craft or class of employees of defendant for all the purposes of said Act. At least 85 percent of all of said locomotive engineers comprising said craft or class on and throughout said Pacific Lines are members of the Grand International Brotherhood of Locomotive Engineers, a voluntary unincorporated association composed of approximately 60,000 persons throughout the United States and Canada who follow the occupation of locomotive engineer on the various railroads of the United States and Canada. Plaintiff is a voluntary unincorporated association organized pursuant to and under the authority of the constitution and laws of said Grand International Brotherhood of Locomotive Engineers.

- Plaintiff is, and ever since the enactment of said Railway Labor Act has been, the sole designated representative of said craft or class of locomotive engineers under, and for all the purposes of, said Railway Labor Act, including collective bargaining, and making and maintaining agreements with defendant concerning rates of pay, rules, and working conditions of loco-[2] motive engineers. For many years before the enactment of the Railway Labor Act, and ever since, there have been agreements negotiated from time to time between plaintiff and defendant concerning rates of pay, rules and working conditions of said craft. The last of said agreements was made in writing, effective January 9, 1931, and has been continuously in effect ever since. with occasional amendments and additions.
- 5. Article 32, section 22, of the present agreement between plaintiff and defendant reads as follows:
 - "The General Committee of Adjustment, Brotherhood of Locomotive Engineers [plaintiff herein] will represent all locomotive engineers in the making of contracts, rates, rules, working agreements and interpretations thereof.
 - "All controversies affecting locomotive engineers will be handled in accordance with the recognized interpretation of the Engineers' contract as agreed upon between the Committee

of Brotherhood of Locomotive Engineers and the Management.

"In matters pertaining to discipline or other questions not affecting changes in Engineers' contract, the officials of the Company reserve the right to meet any of their employees either individually or collectively."

- 6. There is, and at all times herein mentioned has been, a separate craft or class of locomotive firemen in the service of defendant, on and throughout said Pacific Lines, the designated representative of which craft or class of firemen, for the purposes of said Railway Labor Act, is an unincorporated association (hereinafter for brevity called "said Firemen's Committee") having the common name of General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen. Said Firemen's Committee has never been the designated representative [3] of said craft of engineers.
- 7. Defendant recruits most of the members of its craft of locomotive engineers from the competent members of said craft of locomotive firemen in the order of their seniority of service. The numbers of the respective crafts of engineers and Firemen fluctuate from time to time in correspondence with the volume of transportation business of defendant. As said volume increases, senior firemen are called to service as engineers; as it decreases, junior engineers are demoted to firemen. When employees are serving defendant as engineers, plaintiff is their designated

nated representative under and for the purposes of the Railway Labor Act; when serving defendant as firemen, said Firemen's Committee is their representative.

- 8. Said craft of engineers represented by plaintiff is the higher paid and older in point of service of the two crafts, as aforesaid. Both crafts are paid for service on the basis of hours served or miles run. As said volume of transportation business fluctuates, it is of economic importance to the craft of engineers represented by plaintiff that the number of members in said craft at any given time should not be so great as to spread the whole volume of work lower than an agreed amount per member of the craft. In said agreement, effective January 9, 1931, the monthly minimum of hours of service or miles run by members of said craft of engineers has been agreed between plaintiff and defendant.
- 9. Notwithstanding the premises, and in violation of (a) said Railway Labor Act, (b) said agreement effective January 9, 1931, (c) the rights of plaintiff as sole designated representative of said craft of engineers, and (d) the rights of the members of said craft of locomotive engineers on defendant railroad, defendant and said Firemen's Committee have collectively negotiated, and by an agreement effective June 1, 1939, known by them as [4] "Firemen's Agreement," have agreed, in writing, concerning rules and working conditions governing and affecting said craft of engineers in their service as locomotive engineers, including among others, the

following provisions of said Firemen's Agreement, to-wit:

"Article 51

"Adjustment of Differences

"Sec. 1. The right of any engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded." * *

"Article 43

"Demotions and Lost Runs

"Sec. 1. When, from any cause, it becomes 'necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

"First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

"Second: That when reductions are made they shall be in reverse order of seniority.

- "Sec. 2. When hired engineers are laid off on account of reduction in service, they will retain all seniority [5] rights; provided, they return to actual service within 30 days from the date their services are required.
- "Sec. 3. Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3800 miles per month.
- "Sec. 4. In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage, or equivalent thereof, within the limitation of 4000 and 4800 miles for passenger and 3200 and 3800 miles for other regular service, as provided herein. If, in any service, additional assignments would reduce earnings below these limits, regulation will be effected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached.

"On road extra list, sufficient engineers will be maintained to keep the average mileage, or equivalent thereof, between 2600 and 3800 miles per month; provided that when engineers are cut off the working list and it is shown that those on the extra lists are averaging the equivalent of 3100 miles per month, engineers will be returned to the extra lists if the addition will not reduce the average mileage, or the equivalent thereof, below 2600 miles per month.

"Where separate extra lists are maintained for yard service, sufficient engineers will be maintained to keep the average earnings between 26 and 35 days per month; provided that when engineers are cut off the yard working [6] list and it is shown that men are averaging the equivalent of 31 days per month, engineers will be returned to service if the addition will not reduce the average earnings below 26 days per month.

"Note: As to mileage regulations affecting part-time men, see addendum to Article 43, pages 118-119-120.

""Sec. 5. " "

"Sec. 6. In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers." * *

"Article 37

"Section 15.

"Question: (a) If it becomes necessary to eall a fireman for service as an emergency engineer, when the engineers' extra list is exhausted, who should be called?

"(b) Should a senior demoted engineer holding assignment as fireman become available after man used under (a) returns to terminal or completes day's work, who should be used?

"Answer: (a) The senior available qualified man in accordance with his seniority as en-

gineer.

"(b) The senior available man."

"Addendum to Article 43; Application of Mileage Regulations to Part-Time Men.

(At pages 118-119-120 of said Fireman's Agreement).

'Excerpts from letter of November 30, 1634. from Mr. Wm. M. Leiserson, Chairman, National Mediation Board, to Mr. A. Johnston, Grand Chief Engineer, Brotherhood of Locomotive Engineers, Mr. D. B. Robertson, President, Brotherhood of Locomotive Firemen and Enginemen, Mr. J. A. Phillips, President, Order of Railway Conductors, and Mr. A. F. Whitney, President, Brotherhood of Railroad [7] Trainmen, concerning the application of mileage regulations to part-time men, the conditions of which were, before the President's Emergency Board of April-May, 1937, accepted by Mr. G. W. Laughlin, First Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers, and Mr. C. V. McLaughlin, Vice President, Brotherhood of Locomotive Firemen and

Enginemen, and concurred in by the Carrier, as disposing of Case No. 11 that was pending before that Board:

'We understand also from your conversation with respect to part-time men, whether they be engineers and firemen or conductors and trainmen, a sound and practical basis for adjustment would be to permit each organization to regulate the conditions of the parttime man during the time that these men are employed at the occupation covered by such organization. Thus if the mileage limitation on any road was 3300 miles for firemen and 3800 miles for engineers, a man in freight service making 1500 miles as a fireman, then used as emergency engineer for 500 miles, would be permitted to make only 1300 additional miles as a fireman; or a man making 2000 miles as an extra engineer who is cut off the engineer's extra board, would be permitted to make only 1300 additional miles as a fireman. On the other hand, a fireman who has made his maximum mileage of 3300 miles and has been taken off on that account. might be used as an emergency engineer or go on the engineers' extra board for the remainder of the month to make the additional 500 miles up to 3800 in accordance with the engineers' mileage limitation.'

'We understood from the discussions also that nothing in such a regulation of the part-

time men would prevent any organization from regulating the mileage of its own [8] men by adjustment at the end of each month or checking period, in order to offset any excess mileage that an individual may have made. That is to say, if a trainman had made 400 extra miles as an emergency conductor in any one month or checking period, and if at the end of that month or checking period he was working as a trainman, the frainmen's organization would have authority to regulate him to bring his mileage within the trainmen's limitation. If, on the other hand, the man was working as a conductor at the end of the month or checking period, he would be subject to the regulation of the conductors' organization. The point, as we understood it. was that each organization would be free to make adjustment for excess mileage of the men under its jurisdiction to bring them within the mileage limitations set by that organization, And the fact as to whether a man was subject to the jurisdiction of one organization or another would be established by the craft that he was working in at the end of the month or checking period.""

10. An actual controversy exists between plaintiff and defendant with respect to the rights and other legal relations of plaintiff in the premises. It is the assertion and contention of plaintiff that the provisions quoted from said Firemen's Agreement

in paragraph 9, supra, as agreed between defendant and said Fireman's Committee, and the interpretation and application thereof, violate and interfere with the right and duty of plaintiff to act as the sole designated representative of said craft of engineers. with the right and duty of the plaintiff to make, maintain, and interpret agreements concerning rates of pay, rules and working conditions for said craft of engineers, and with the rights of said craft of engineers, under and for the purposes of said Railway Act and the aforementioned Engineers' Agree- [9] ment by and between plaintiff and defendant; and that by said Firemen's Agreement defendant has bargained collectively with said Firemen's Committee with respect to rules and working conditions governing, affecting and concerning said craft of engineers in their service as locomotive engineers. They do so violate and interfere. Defendant contends that they do not.

Wherefore, plaintiff demands that the Court adjudge and declare the rights and legal relations of plaintiff and defendant in the premises, with such further relief in the decree, and at the foot thereof, as, may be proper.

GEORGE M. NAUS, Attorney for Plaintiff.

HORN, WEISELL, McLAUGHLIN & LYBARGER

By CLARENCE E. WEISELL, Of Counsel for Plaintiff.

[Endorsed]: Filed Aug. 12, 1939. [10]

[Title of District Court and Cause.]

ANSWER

The above-named defendant, for its answer to the plaintiff's complaint, on file in the above-entitled action, admits, alleges and denies as follows:

- 1. Admits the allegations of paragraph 2 of said complaint.
- Answering paragraph 3 of said complaint, defendant admits that, substantially as alleged in the first sentence of said paragraph, commencing with the word "there" in line 8 on page [11] 2, and continuing to and including the word "Act" in line 16. on page 2 of said complaint, there is and for many years last past has been a craft or class of railroad employes known as locomotive engineers, and that certain members of said craft or class are employed by defendant on its Pacific Lines, as the same are described in paragraphs 2 and 3 of said complaint; but defendant denies that the number of such locomotive engineers in its employ is now, or continuously or at any time or times during the several decades last past has been, approximately 1500; and in this behalf defendant alleges that the number of such employes, qualified as locomotive engineers, and holding seniority in defendant's service and employment as such engineers, is and for several years immediately last past has been approximately 2500. Defendant admits, in this behalf, that said eraft or class of engineers has been recognized by defendant as a separate craft or class of employes,

for the purposes of the Railway Labor Act as defined in Section 2 of said Act, and particularly for the purpose of determining the representative of said craft or class, as contemplated by paragraph Fourth of said Section 2.

Further answering the allegations of said paragraph 3, commencing with the words "At least" in line 16, and concluding with the word "Engineers" in line 26, all on page 2 of said complaint, defendant states that it is without knowledge or information sufficient to form a belief as to the truth of said allegations.

- 3. Admits the allegations of paragraphs 4, 5 and 6 of said complaint.
- 4. Answering paragraph 7 of said complaint, defendant admits that from time to time, when additional locomotive engineers are required in its service, they are largely obtained from the ranks of qualified firemen, and that such firemen are generally advanced to service as engineers in accordance with their seniority [12] of service as firemen; admits further that the number of the men in service as engineers varies continually in accordance with the fluctuations in the volume of defendant's traffic and consequent fluctuations in the quantity of transportation service required of and performed by defendant; that the number of men in service as, firemen also varies continually, and for similar reasons; that when said volume of traffic and transportation service increases, and additional engineers are

required, furloughed engineers (i. e., those who do not hold seniority as firemen, and are commonly known as 'hired" engineers); and properly qualified firemen are called to service as engineers; and correspondingly, when said volume of traffic and transportation service declines, and fewer engineers are required, such "hired" engineers, whose seniority as engineers is insufficient to enable them by the exercise of said seniority to continue their employment as engineers, are furloughed, and those engineers holding seniority as firemen, whose seniority as engineers is insufficient to enable them by the exercise thereof to continue their employment as engineers, are demoted from the grade or status of engineers to the grade or status of firemen, such displacement from the grade or status of engineers by furlough or demotion being accomplished in the reverse order of the seniority, as engineers, of the men affected thereby.

Further answering said paragraph 7, defendant denies, generally and severally, all and singular, the allegations set forth in the sentence commencing with the word "When", in line 9, and concluding with the word "representative", in line 13, all on page 4 of said complaint; and in this behalf defendant alleges that, under and for the purposes of the Railway Labor Act, plaintiff is the designated representative of persons in the employ of defendant, who are serving as engineers, to the extent and only to the extent that said plaintiff represents the craft

or class of engineers as an entirety, for purposes of collective bargaining and [13] agreement; that said plain iff has not and does not thereby become, and has not been, and is not now, the designated representative, or the representative at all, of each or any person or persons serving as engineers, for all or any purposes of or under the Railway Labor Act, or for any other purposes, except to the extent that any one or more of said persons may individually have selected said plaintiff as his or their individual representative for such purpose. Defendant further alleges that, irrespective of the plaintiff having been designated as and being presently the representative of the craft or class of engineers, as an entirety, for purposes of collective bargaining and agreement, each individual employe, whether serving as an engineer or fireman or in any other capacity, is entitled without interference on the part of plaintiff or defendant, or any other person or organization, to select his own representative under the Railway Labor Act for the purpose of presenting, adjusting and settling his individual grievances and disputes growing out of his employment by defendant.

5. Answering paragraph 8 of said complaint, defendant admits that, substantially as alleged in the first sentence of said paragraph 8, the rates of pay for engineers are, in general, somewhat higher than for firemen upon corresponding runs or in corresponding services; and that engineers, as a

group, are in general older in point of aggregate years of service, than are firemen; and in this respect defendant alleges that substantially all engineers in defendant's service also hold seniority as firemen and, in nearly all cases, the seniority of each individual, as a fireman, antedates his seniority as an engineer. Defendant admits further substantially as alleged in the sentence commencing with the word "Both", in line 16, and ending with the word "run", in line 17, on page 4 of said complaint, that individuals employed by defendant, as either firemen or engineers, are paid wages for their services, based in general upon the miles run, either actual or constructive, [14] or the hours on duty, or, a combination of both hours and miles, whichever results in the greater payment; but in this behalf defendant alleges further that such wage payments are made pursuant to and are governed by specific provisions of current working agreements; that such provisions are lengthy, involved, and complicated, and designed to cover the wide variety of services performed and conditions encountered in the conduct of the defendant's railroad business; that such provisions embody, among other things, clauses obligating defendant, in certain instances, to make wage payments in the nature of penalties, i. e., for work not done and services not rendered.

Further answering said paragraph 8, and particularly that portion of said paragraph commencing

with the words "As said" in line 17, and concluding with the words "the craft", in line 22, on page 4 of said complaint, this defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained therein.

Further answering said paragraph 8, and particularly the last sentence of said paragraph commencing with the words "In said", in line 22 on said page 4, defendant denies each and every, all and singular, generally and specifically, the allegations set forth in said sentence.

Answering paragraph 9 of said complaint, defendant admits that, substantially as therein alleged, said defendant entered into an agreement with said Firemen's Committee, effective June 1, 1939, known as the "Firemen's Agreement for Southern Pacific Company-Pacific Lines"; and that said firemen's agreement ever since has been, and now is, in full force and effect, and in this behalf defendant alleges that said agreement is, in fact, the current working agreement for firemen on defendant's Pacific Lines, entered into pursuant to the Railway Labor Act, and providing the rates of pay, rules, and working conditions for firemen, hostlers, [15] and hostler helpers on said Pacific Lines; admits further that there are embodied in said firemen's agreement the articles and sections set forth in words and figures in said complaint; commencing on line 6, on page 5 thereof, and con-

tinuing to and including line 19 on page 9 thereof. Defendant denies each and all of the other allegations of said paragraph 9, and in particular denies that all or any of said provisions of said firemen's agreement, or any portion thereof, however interpreted, is or ever has been in violation of the Railway Labor Act, or any provision thereof, or in any manner in violation of the engineers' agreement, dated and effective January 9, 1931, or in any manner in violation of the rights or any rights of plaintiff as representative of the craft or class of locomotive engineers, or in violation of the rights or any rights of the members or any members of said craft of said locomotive engineers employed on defendant's railroad, either as alleged by plaintiff or otherwise.

Further answering said paragraph 9, defendant alleges that said current firemen's agreement, entered into with the Firemen's Committee as aforesaid effective June 1, 1939, was in fact and effect, nothing more than the revision and consolidation, without material change, of preexisting agreements theretofore entered into between defendant and said Firemen's Committee, the making and existence of all of said agreements having at all times been fully known to the plaintiff, and to each of the individual members of the plaintiff committee.

Article 51, Section 1, of the current firemen's agreement (set forth in full in lines 6 to 13, inclusive, on .

page 5 of said complaint) was brought forward into the firemen's agreement, dated June 1, 1939, without any change whatsoever from a previous firemen's agreement, similar in form to the agreement of June 1, 1939, entered into between defendant and the Firemen's Committee, effective as of May 1st, [16] 1929; that Article 43 of the firemen's agreement (as reproduced in said complaint, commencing in line 15 on page 5, and continuing to and including line 10 on page 7 of said complaint) was, with the exception hereinafter set forth, likewise carried forward into the current firemen's agreement of June 1, 1939, from said preceding firemen's agreement, entered into between defendant and the Firemen's Committee as of May 1st, 1929; that although the portions of said Article 43 reproduced in lines 20 to 32 on page 6, and lines 1 to 6 on page 7, of said complaint, did not appear in the firemen's, agreement of May 1st, 1929, the substance thereof was separately agreed to on October 31, 1930, by and between defendant and the Firemen's Committee, and thereupon reduced to writing; that said agreement of October 31, 1930, was further amplified by a written agreement entered into between defendant and the Firemen's Committee on March 24, 1939, shortly prior to the revision, reprinting, and formal execution of the current firemen's agreement.

Further answering said paragraph 9, defendant alleges that the portion of Section 15 of Article 37

of the firemen's agreement of June 1, 1939, reproduced in lines 11 to 22, inclusive, on page 7 of said complaint, was agreed to in writing, as between defendant and the Firemen's Committee, on or about the 3rd day of December, 1935, and thereupon became and ever since has been and now is in full force and effect, and was added to the current edition of the firemen's agreement, as a part thereof, when the same was consolidated and revised, effective June 1, 1939, as aforesaid.

Further answering said paragraph 9, defendant alleges that the addendum to Article 43, "Application of Mileage Regulations to Part-Time Men" reproduced at lines 23 to 32, inclusive, on page 7, lines 1 to 32 on page 8, and lines 1 to 19, inclusive, on page 9 of said complaint, is the substance of an agreement [17] entered into between defendant, the Firemen's Committee, and also the plaintiff, each through its lawfully authorized representative, in settlement of certain controversies then pending to which the plaintiff, the defendant, and the Firemen's Committee were parties, which agreement was dated May 4, 1937; that said agreement was duly incorporated in the revised and reprinted current edition of the firemen's agreement, effective June 1. 1939, as aforesaid.

7. Answering paragraph 10 of said complaint, defendant admits that plaintiff makes the assertions and contentions therein set forth, but denies that the same are well founded in either law or fact; defend-

ant denies, in particular, the allegations set forth in the sentence appearing in lines 5 and 6 on page 10 of said complaint, and reading "they do so violate and interfere". Defendant admits that an actual controversy exists between plaintiff and defendant, as alleged in said paragraph 10.

Wherefore, having fully answered said complaint, defendant prays that the same be dismissed, and that defendant have judgment for its costs of suit herein incurred, and for such other and further relief as may be meet and proper.

C. W. DURBROW,
HENLEY C. BOOTH,
BURTON MASON,
Attorneys for Defendant.

Service of the foregoing Answer and receipt of copy thereof is admitted this 27th day of September, 1939.

GEO. M. NAUS,
HORN, WEISELL, McLAUGHLIN & LYBARGER,
Attorneys for Plaintiff.

Accorneys for 1 mineral

Attorneys for Intervener.

[Endorsed]: Filed Sept. 27, 1939. [18]

District Court of the United States Northern District of California Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 9th day of October, in the year of our Lord one thousand nine hundred and thirty-nine.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L -Civil

[Title of Cause.]

After hearing attorney for the intervenor herein, and no other appearance being made, it is Ordered that the petition for leave to intervene be granted.

[19]

[Title of District Court and Cause.]

ANSWER OF INTERVENER [20]

Intervener, by leave of court first obtained, files its answer as follows to the plaintiff's complaint:

First Defense

I.

Intervener admits paragraphs 1 and 2 of the complaint.

II.

Answering paragraph 3 of the complaint, Intervener admits that there is and continuously for many years has been a craft or class of locomotive engineers in the service of defendant on throughout Pacific Lines, which craft or class, ever since the enactment of the Railway Labor Act (U. S. C. 45:151, et seq.), has been recognized by defendant as a craft or class of employees of defendant for the purposes of said Act. Intervener denies that the number of locomotive engineers in the employ of defendant's Pacific Lines is or has been at any time mentioned in paragraph 3 approximately 1500. Intervener is informed and believes, and therefore avers, that the number of engineers qualified and holding seniority in defendant's service is approximately 2500. Intervener is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the last two sentences of paragraph 3 (line 16, commencing with "At least," to and including line 26), except that intervener admits-that the Grand International Brotherhood of Locomotive Engineers is a voluntary unincorporated association of locomotive engineers on the various railroads of the United States and Canada.

III.

Intervener admits paragraphs 4, 5 and 6 of the complaint, but intervener avers that both under the Railway Labor Act and under the contracts between

the parties, intervener [21] has all of the rights averred in this answer, and if any allegation of any of said paragraphs can be construed as being contrary to the averments hereof, intervener does not admit but denies such allegation.

IV.

Intervener admits paragraph 7 of the complaint, except that it denies each and every allegation in the last sentence thereof (line 9, commencing with "When employees," to and including line 13). Intervener avers that plaintiff is the designated representative of employees working for defendant as engineers only to the extent that plaintiff represents the craft or class of engineers as an entirety for the purpose of collective bargaining and agreement. Plaintiff is not and never has been the representative of any person serving as engineer for any other purpose except to the extent that such person, as an individual, may select or have selected plaintiff to represent him. Under the Railway Labor Act every employee of defendant has the right to select without interference or coercion his own representative for the presentation of individual grieyances.

V

Answering paragraph 8 of the complaint, intervener admits that the craft of engineers is, generally speaking and as a group, the higher paid and older in point of service of the two crafts of engineers and firemen, and admits that both crafts are paid for service on the basis of hours served and miles

run. Intervener is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the third sentence (line 17, page 4, commencing with "As said volume," to and including the words "the craft," in [22] line 22, page 4) of paragraph 8. Intervener denies each and every allegation in the last sentence of paragraph 8 (line 22, page 4, commencing with "In said agreement" and ending with "plaintiff and defendant," line 25, page 4).

VI.

Answering paragraph 9 of the complaint, intervener admits that it entered into an agreement with defendant effective as to rules on June 1, 1939, and that said agreement contained, among other provisions, the provisions quoted in said tparagraph of the complaint. Intervener denies each and every other allegation of said paragraph 9.

VII.

Answering paragraph 10 of the complaint, intervener admits that plaintiff makes the assertions and contentions therein stated, and admits that an actual controversy exists between plaintiff and defendant, but denies that any of the said assertions and contentions of plaintiff is well founded, and denies that any provision of said Firemen's agreement violates or interferes with any right of plaintiff or any of plaintiff's members, or any right of the craft of engineers, or is in any way contrary to the Railway Labor Act.

. Second Defense

For a second defense to said complaint and to the alleged cause or causes of action therein, intervener avers:

I.

The Brotherhood of Locomotive Firemen and Enginemen is and was at all times herein mentioned an unincorporated voluntary association, and intervener at all said times was and [23] is now an unincorporated, voluntary association organized under the authority of said Brotherhood.

II.

Plaintiff and intervener each has a contract with defendant. Plaintiff's contract became effective January 9, 1931, and is called herein the "Engineers' agreement"; intervener's agreement became effective as to rates of pay October 1, 1937, and as to rules June 1, 1939, and is called herein the "Firemen's agreement."

III.

In locomotive employment in railway operation there are constant changes in the duties and status of employees and a constant ebb and flow between the crafts of engineers and firemen. The number of engineers in defendant's service varies continuously with fluctuations in volume of traffic, seasonal and otherwise, and the number of firemen in defendant's service varies continuously for the same reasons. When the volume of business increases, furloughed engineers, who do not hold semiority as firemen, and.

properly qualified firemen are called to service as engineers. When traffic declines engineers are demoted and many of them displace firemen because most engineers in defendant's service also hold seniority as firemen, and in most of such cases the person's seniority as fireman antedates his seniority as engineer.

TV.

By reason of the conditions of their employment, the craft of firemen represented on defendant's lines by intervener has a direct and important interest in the conditions under which firemen may become engineers or engineers may displace firemen. For many years before and at all times since the [24] the passage of the Railway Labor Act said Brotherhood of Locomotive Firemen, and Enginemen, through its appropriate agencies, has bargained and made contracts with various rail carriers, including defendant, with respect to the same subject matter as is covered by the provisions of the Firemen's agreement quoted in the complaint, Said Firemen's. agreement was, in effect, a revision and consolidation of preexisting agreements theretofore entered into between defendant and intervener, all of which were made with the full knowledge of the Brotherhood of Locomotive Engineers and of plaintiff and of each of plaintiff's individual members.

Section 1 of Article 51 of said Firemen's agreement quoted in the complaint was based upon a similar provision in the agreement between defendant and intervener, dated May 1, 1929, which was based upon a practically identical provision in subsection (a) of Article VII of the agreement called "Chicago Joint Agreement," dated May 17, 1913, between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, and a substantially similar provision has since appeared in all contracts of each Brotherhood, or the agencies thereof, with defendant.

All portions of Article 43 quoted in the complaint, with the exception of the last three paragraphs of section 4 (commencing with "On road extra list," in line 20, page 6, of the complaint, to and including line 6, page 7 thereof), are the substantial equivalent of provisions of the agreement between defendant and intervener, dated May 1, 1929. The first paragraph of section 1 of said Article 43 is the substantial equivalent of section 36 (a) of the agreement between the Brotherhood of Locomotive Firemen and Enginemen and defendant, dated May 16, [25] 1910, and all the provisions of said Article 43 quoted in the complaint, with the exception of the last three paragraphs of section 4 thereof, appeared in substantially the same form in Article X1 of said Chicago Joint Agreement, dated May 17, 1913. Said last three paragraphs of section 4 are the equivalent in substance of an agreement between defendant and intervener, dated October 31, 1930.

That portion of section 15 of Article 37 in the Firemen's agreement which is set forth in paragraph 9 of the complaint is the precise equivalent

of an agreement made between intervener and defendant, dated December 3, 1935.

The "Addendum to Article 43; Application of Mileage Regulations to Part-Time Men," quoted in paragraph 9 of the complaint, and being excerpts from a letter of November 30, 1934, as therein stated, is the substance of an agreement entered into between defendant, plaintiff and intervener dated May 4, 1937, which was later incorporated into the said Firemen's agreement effective June 1, 1939.

Neither the Firemen's agreement nor any provision thereof is or was at any time a violation of plaintiff's rights under the Railway Labor Act or under the Engineers' agreement, or in violation of any right of any member of plaintiff or of the Brotherhood of Locomotive Engineers.

\mathbf{v}

"Members" of the Brotherhood of Locomotive Firemen and Enginemen are at all times in the service of defendant as engineers, and such members desire to be represented by intervener in the handling of any grievances which may arise out of such employment. Under the Railway Labor Act intervener has the right to represent such members and also any other employees of [26] defendant who desire representation by intervener in the handling of grievances. Intervener's said right of representation is expressly provided for in section 1 of Article 51 of said Firemen's agreement (set forth in paragraph 9 of the complaint), and is recognized by said Engineers' agreement effective January 9, 1931.

Wherefore, intervener prays that the court decree that plaintiff take nothing by this suit; that plaintiff is not entitled to any of the relief prayed herein; that each and every provision of said Firemen's agreement mentioned in the complaint is valid and binding in accordance with its terms; that intervener recover its costs and have such other and further relief as is appropriate in the premises.

DONALD R. RICHBERG, EUGENE M. PRINCE,

Attorneys for Intervener.

DAVIES, RICHBERG, BEEBE, BUSICK & RICHARDSON,

815 Fifteenth Street, Washington, D. C.

PILLSBURY, MADISON & SUTRO.

225 Bush Street, San Francisco, California, Of Counsel. [27]

State of California, City and County of San Francisco—ss.

C. W. Moffitt, being first duly sworn, deposes and says: That he is an officer of intervener, to wit, General Chairman of the Brotherhood of Locomotive Firemen and Enginemen, Southern Pacific Company (Pacific Lines), an unincorporated association, and as such officer is authorized to make this verification on behalf of said intervener; that he has read the foregoing answer and knows the con-

tents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information or belief, and that as to those matters he believes it to be true.

C. W. MOFFITT

Subscribed and sworn to before me this 27th day of September, 1939.

[Notarial Seal] FRANK L..OWEN, Notary Public in and for the City and County of San Francisco, State of California.

Receipt of a copy of the within Answer is hereby admitted this 28th day of September, 1939.

C. W. DURBROW, HENLEY C. BOOTH, BURTON MASON,

Attorneys for Defendant.

Receipt of a copy of the within Answer is hereby admitted this 28th day of September, 1939.

GEO. M. NAUS, HORN, WEISELL, McLAUGH-LIN & LYBARGER,

Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 9, 1939. [28]

District Court of the United States Northern District of California Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday, the 23rd day of March, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

After hearing attorneys herein, it is Ordered that the trial of this case be set for June 18th, 1940, at ten o'clock a. m. [29]

District Court of the United States Northern District of California Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 16th day of May, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause:]

On motion of George Naus, Esq., attorney for plaintiff, Mr. Goodrich, Esq., appearing as attorney for the Southern Pacific Company, and Eugene Prince, Esq., appearing as attorney for the intervenor, consenting thereto, it is Ordered that this case now on the calendar for June 18th, be re-set for September 4th, 1940, for trial. [30]

District Court of the United States Northern District of California Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 9th day of July, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.].

Ordered this case go off the calendar for September 4th, 1940, and is hereby reset for trial for September 19th, 1940, at ten o'clock A. M. [31]

District Court of the United States Northern District of California Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 10th day of September, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

Pursuant to motions and consents of attorneys herein, it is Ordered that this case go off the calendar for September 19th, 1940, and is hereby reset for Court trial for October 1st, 1940, at 10 o'clock a.m. [32]

District Court of the United States Northern District of California Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 1st day of October, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil ·

[Title of Cause.]

Ordered that the trial of this case be continued to October 3rd, 1940, at ten o'clock a. m., for trial.

[33]

District Court of the United States Northern District of California Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 3rd day of October, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

By consent of attorneys for all parties, it is Ordered that the trial of this case be continued to October 10th, 1940, at ten o'clock a. m., at Sacramento. [34]



District Court of the United States Northern District of California Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 10th day of October, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge, in chambers.

No. 21301-L Civil.

[Title of Cause.]

This case came on regularly this day for trial before the Court. George M. Naus, Esq., attorney for the plaintiff was present, and upon his motion, Clarence E. Weisell, Esq., who was present, was ordered admitted to practice before this Court for the trial of this case and was associated with Mr. Naus as attorney for the plaintiff. Burton Mason, Esq., was present as attorney for the defendant. Eugene R. Prince, Esq., attorney for the Intervening Defendant was present, and upon his motion, Donald R. Richberg was admitted to practice before this Court for the trial of this case and was associated with Mr. Prince as attorney for the Intervening Defendant. The attorneys aforesaid each waived trial by jury. Messrs. Naus, Mason and Richberg each gave statements of their respective cases to the Court. Peter O. Peterson was sworn and

testified on behalf of the plaintiff, who rested. Cornelius M. Buckley was sworn and testified on behalf of the defendant, who rested. David B. Robertson was sworn and testified on behalf of the Intervening Defendant. Exhibits marked Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9a, 9b, 9c were introduced into evidence and exhibits marked Nos. A, B and C were introduced into evidence and exhibits marked Nos. A, B & C were introduced for identification. Ordered that the further trial of this case be continued to October 11th, 1940, at ten o'clock a. m. [35]

District Court of the United States Northern District of California Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 11th day of October, in the year of our Lord one thousand nine hundred and forty.

Present: the Honorable Harold Louderback, District Judge, in chambers.

No. 21301-L Civil

[Title of Cause.]

The attorneys herein being present, the trial of this case was resumed. David B. Robertson was recalled and testified further on behalf of the Intervening Defendant, who rested. In rebuttal, Geo. W. Laughlin was sworn and testified on behalf of the plaintiff. Exhibits marked Nos. 10 and 11 were introduced into evidence and exhibit marked No. D was introduced for identification. Plaintiff rested. Mr. Richberg made a motion for Judgment upon the pleadings, and made a motion for Judgment upon the evidence, on behalf of the Intervening Defendant, and by stipulation between Mr. Naus, Mr. Mason and Mr. Richberg, the Court granted permission to the Messrs. Mason and Richberg to file written motions for Judgment. By consent of said attorneys, it is Ordered that the case be submitted on briefs to be filed in 30, 30 and 20 days, said time to start running upon the filing with the Clerk of the Reporter's transcript. [36]

District Court of the United States Northern District of California Southern Division

At a stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 25th day of November, in the year of our Lord one thousand nine hundred and forty.

Present; the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

Ordered that the above-entitled case be dropped from the Judicial Conference Calendar. [37]

District Court of the United States Northern District of California Southern Division

At a stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 31st day of March, in the year of our Lord one thousand nine hundred and forty-one.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

On motion of Harold Lerner, Esq., and it appearing that all the briefs have been filed, it is Ordered that this case be and the same is hereby submitted.

[38]

District Court of the United States Northern District of California Southern Division

At a stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 28th day of April, in the year of our Lord one thousand nine hundred and forty-one.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

It appearing from the record that this case is now under submission, it is Ordered that the case be dropped from the Judicial Conference Calendar.

[39]

District Court of the United States Northern District of California Southern Division

At a stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 30th day of April, in the year of our Lord one thousand nine hundred and forty-one.

Present: the Honorable Harold Louderback, District Judge.

.No. 21301-L Civil

[Title of Cause.]

This case having been tried and submitted, and being now fully considered, it is Ordered that a Judgment be entered for the defendant and intervenor, upon findings of fact and conclusions of law, to be filed, together with costs. [40]

District Court of the United States Northern District of California Southern Division

At a stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 8th day of July, in the year of our Lord one thousand nine hundred and forty-one.

Present: the Honorable Harold Louderback, District Judge.

No. 21301-L Civil

[Title of Cause.]

On July 3, 1941, the Court approved and signed the defendants and intervenor's proposed Findings of Fact and Conclusions of Law and Decree, and a now appearing to the Court that the parties herein entered into and C'd a stipulation on June 23, 1941, extending the time to July 21, 1941, within which the plaintiff might file its proposed amendments to said findings, it is now ordered that the approval of the court to said findings and decree is hereby withdrawn; that the said findings and decree be stricken from the file and that the same be relodged pending the filing by the plaintiff of its proposed amendments and objections. [41]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW [42]

The above entitled action came on regularly for trial on October 10, 1940, before the above entitled court sitting without a jury; George M. Naus, Esq., and Clarence E. Weisell, Esq., appeared on behalf of the plaintiff; Burton Mason, Esq., appeared on behalf of the defendant, and Donald R. Richberg, Esq., and Eugene M. Prince, Esq., appeared on behalf of the intervener. Oral and documentary evidence was introduced and thereafter briefs were filed with the court. On March 31, 1941, the cause was submitted to the court for decision.

The court having fully considered all the evidence and briefs and having heretofore on April 30, 1941, announced its decision, now makes the following:

FINDINGS OF FACT

- 1 Defendant is and at all times herein mentioned was a common carrier by railroad, engaged in the transportation of passengers and property in, through and between the states of Oregon, California, Arizona, New Mexico, Texas, Nevada and Utah.
- 2. Part of defendant's lines is and was at all said times a separate operating unit called "Pacific Lines," with termini at Portland, Oregon, and San Francisco, California, Ogden, Utah, and El Paso, Texas.

- 3. At all times herein mentioned plaintiff was and is now a voluntary unincorporated labor association organized under the authority of the Grand International Brotherhood of Locomotive Engineers (hereinafter called the Engineers' Brotherhood); intervener was and is now a voluntary unincorporated labor association organized under the authority of The Brotherhood of [43] Locomotive Firemen and Enginemen (hereinafter called the Firemen's Brotherhood); both said brotherhoods were and are now likewise voluntary unincorporated labor associations, members of which are and at all said times have been employed as locomotive firemen and engineers on the railroads of the United States and Canada, including said Pacific Lines. brotherhoods have, respectively, total memberships of approximately 60,000 (Engineers) and 85,000 (Firemen). The memberships of the brotherhoods overlap; most enginemen belong to one or the other, some belong to both, and a few to neither.
- 4. (a) There are and continuously for many years have been a craft or class of locomotive engineers and a craft or class of locomotive firemen in the service of defendant on said Pacific Lines, which crafts or classes ever since the enactment of the Railway Labor Act have been and are now recognized by defendant as crafts or classes of employees of defendant within the meaning of said Act. Plaintiff is and ever since the enactment of the Railway Labor Act has been the representative, for purposes of collective bargaining and agreement,

selected by a majority of the class or craft of locomotive engineers on Pacific Lines. Intervener is and ever since the enactment of said Act has been the representative, for purposes of collective bargaining and agreement, selected by a majority of the class or craft of locomotive firemen on said Pacific Lines.

- (b) The craft of engineers is, generally speaking and as a group, the higher paid and older in point of service of said two crafts. Individuals in both crafts are paid for service on the basis of hours served or miles run, either actual or constructive, or a combination of both hours and [44] miles, whichever results in the greater payment. Such wage payments are made pursuant to and are governed by specific provisions of the agreements referred to in paragraph 5 hereof.
- 5. For many years before the passage of said Act and ever since, agreements have been negotiated from time to time between plaintiff and defendant and between defendant and intervener concerning rates of pay, rules, and working conditions of said crafts of engineers and firemen. The last of said agreements between plaintiff and defendant was made in writing, effective January 9, 1931, and has been continuously in effect ever since, with occasional amendments and additions; said agreement is hereinafter called the Engineers' Agreement. The last of said agreements between defendant and intervener was made in writing, effective as to rates of

pay October 1, 1937, and as to rules June 1, 1939, and has been continuously in effect ever since, with occasional amendments and additions; said agreement is hereinafter called the Firemen's Agreement.

- In locomotive employment, there are and continuously for many years have been constant changes in the duties and status of the engine employees and a constant ebb and flow between the craft of engineers and firemen. The number of engineers in defendant's service varies and has varied continuously with fluctuations in volume of traffic, seasonal and otherwise, and the number of firemen in defendant's service varies and has varied continuously for the same reasons. When the volume of defendant's business increases, furloughed engineers and qualified firemen are called to service as engineers. When traffic declines, engineers are demoted and almost all of them displace firemen; firemen so displaced in turn displace other firemen their juniors on the firemen's [45] seniority list and firemen with the least seniority are released from work.
- (b) When additional locomotive engineers are required on Pacific Lines, they are largely obtained from the ranks of qualified firemen, and such firemen are generally advanced to service as engineers in the order of their seniority as firemen. Firemen are required to qualify for service as engineers and to accept promotion when an opening occurs.
- (c) As of January 1, 1940, there were 2,343 employees of defendant on the seniority list of en-

gineers for Pacific Lines, of whom 1,654 were actually employed as engineers and 497 were actually employed as firemen. On that day approximately one fifth of the firemen employed had been demoted from the engineers' working list, and at the time of their demotion had displaced firemen their juniors. As of July 1, 1940, there were 2,307 employees of defendant on the seniority list of engineers for Pacific Lines, of whom 1,736 were actually employed as engineers and 326 were actually employed as firemen. On that day approximately one seventh of the firemen employed had been demoted from the engineer's working list and at the time of their demotion had displaced firemen their juniors.

7. (a) In the operation of Pacific Lines, there arise individual claims and grievance cases, involving disputes between individual employees and defendant as to their respective rights under the agreements referred to in paragraph 5 and as to matters not covered by said agreements. It is and ever since long prior to the enactment of the Railway Labor Act has been the custom for an engineman who has an individual claim arising out of any such dispute, and who desires the Firemen's or Engineers' Brotherhood (or other representative) to [46] represent him in presenting and handling to conclusion the claim against defendant, to select whichever brotherhood (or other representative) he desires. In such cases à claimant engineman is not and never has been required to choose as his representative the brotherhood or labor organization selected as a representative for collective bargaining by the majority of employees in the service in which the claimant was employed when the dispute arose.

- The usual manner of handling such indi-· (b) vidual claims is and since long prior to the enactment of the Railway Labor Act continuously has been for the claimant to select as his representative the brotherhood of which he is a member, regardless of the craft or class in which he was employed when the dispute arose. In a limited number of cases, the claimant presents or has presented his claim to defendant directly and without representation, or he selects or has selected another organization or individual to represent him. Such presentation and handling to conclusion of a claim by the individual directly concerned, or a representative other than the brotherhood to which claimant belongs, is within the scope and meaning of the "usual manner of handling." When a claim, after initial presentation to defendant, is handled further with defendant's officers, or subsequently presented to the National Railroad Adjustment Board, it is usually handled by the same brotherhood (or other representative selected by the claimant) as presented the the claim to defendant.
- (c) On almost every railroad in the United States, all individual claims, grievances and disputes of enginemen against their employers, whether within the scope of a collective bargaining

agreement or not, and whether involving rights arising from such agreement or not, are and from a date long prior to the passage of the Railway Labor Act have been handled in the manner [47] hereinabove set forth as applicable to defendant's Pacific Lines, and such was at all said times and is now the usual manner of handling such claims.

- At all times herein mentioned the Engineers' Brotherhood and Firemen's Brotherhood have been and now are in competition for members. If members of the Firemen's Brotherhood were required to present their individual claims and grievances arising from service as engineers through the Engineers' Brotherhood, that fact would discourage membership in the Firemen's Brotherhood and encourage membership in the Engineers' Brotherhood. The presentation of such claims and grievances: through the Firemen's Brotherhood, or other representatives chosen by the individual claimant, does not affect or alter the Engineers' Agreement referred to in paragraph 5 or other collective bargaining agreement, or infringe any right of plaintiff as representative of the craft or class of engineers.
- 9. Section 1 of Article 51 of said Firemen's Agreement (which provides for the right of individual representation in claim and grievance cases) was based upon a similar provision in the agreement between defendant and intervener, dated May 1, 1929, which was based upon a practically identical provision in subsection (a) of Article VII of the agreement called "Chicago Joint Agreement."

dated May 17, 1913, between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen. A substantially similar provision has since appeared in all contracts of each brotherhood, or the agencies thereof, with defendant. Neither plaintiff nor the Engineers'. Brotherhood protested the inclusion of such provisions in any agreement between defendant and intervener until early in the year 1939.

10. The so-called mileage provisions of the Firemen's Agreement which are mentioned in the complaint, are provisions [48] concerning which it is competent for intervener to bargain and contract with defendant. By reason of the conditions of their employment, the craft of firemen represented on defendant's lines by intervener has a direct interest in the conditions under which firemen may become engineers or engineers may displace firemen. For many years before and at all times since the passage of the Railway Labor Act, said Firemen's Brotherhood, through its appropriate agencies, has bargained and made contracts with various rail carriers, including defendant, with respect to the same subject matter as is covered by the provisions of the Firemen's Agreement quoted in the complaint. 'Said Firemen's Agreement was, in effect, a revision and consolidation of pre-existing agreements theretofore entered into between defendant and intervener, all of which were made with the full knowledge of the Engineers' Brotherhood and plaintiff and without protest from them.

- 11. (a) The provisions of Article 43, sections 1, 2, 3, 4, and 6, and the Addendum to Article 43, Application of Mileage Regulations to Part-Time Men, of the Firemen's Agreement, were and are intended to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is intended to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or minimum miles or hours.
- (b) Article 32, section 6, of the Engineers' Agreement was and is intended to regulate the displacement of firemen. [49]
- 12. (a) Provisions similar in effect to Article 43 of the Firemen's Agreement and to Article 32, section 6, of the Engineers' Agreement are and were, prior to May 17, 1913, and ever since, to be found in engineers' and firemen's agreements with practically every railroad in the United States. The mileage provisions of the Engineers' and Firemen's Agreements are and since December 1, 1918, have been substantially identical. On Pacific Lines and almost every railroad in the United States, the firemen's and engineers' rules governing the demotion of engineers and displacement of firemen are and have been since May 17, 1913, substantially identical.
- (b) On Pacific Lines the privilege of demoted engineers to displace firemen their juniors on the

firemen's seniority list was first created by agreement between defendant and intervener on March 18, 1908.

- 13. The Addendum to Article 43 of the Firemen's Agreement is a true statement of all facts and representations therein recited, and its provisions were suggested by a chairman of the National Mediation Board. That portion of the Addendum alleged by plaintiff to be unlawful was not intended to be a regulation, but was intended as an illustration.
 - 14. The Questions and Answers under Article 37, section 15, of the Firemen's Agreement were and are intended and reasonably calculated to protect the craft of firemen in their rights under said section and have a reasonable relation to the firemen's seniority rules.
 - 15. At and before and at all times since the enactment of the Railway Labor Act in 1926, the custom on most railroads of the United States has been and is now for the employer to bargain collectively with its employees by crafts; [50] the custom on said railroads was at all said times and is now that such class or craft representative be the organization chosen by the majority of the employees in said craft.
 - Agreement quoted in the complaint, with the exception of the last three paragraphs of section 4 (commencing with "On road extra list"), are the substantial equivalent of provisions of the agreement

between defendant and intervener, dated May 1, 1929. The first paragraph of section 1 of said Article 43 is the substantial equivalent of section 36 (a) of the agreement between the Firemen's Brotherhood and defendant, dated May 16, 1910, and all the provisions of said Article 43 quoted in the complaint, with the exception of the last three paragraphs of section 4 thereof, appeared in substantially the same form in Article XI of said Chicago Joint Agreement, dated May 17, 1913. Said last three paragraphs of section 4 are the equivalent in substance of an agreement between defendant and intervener, dated October 31, 1930.

That portion of section 15 of Article 37 in the Firemen's Agreement which is set forth in paragraph 9 of the complaint is the precise equivalent of an agreement made between intervener and defendant, dated December 3, 1935.

The Addendum to Article 43; Application of Mileage Regulations to Part-Time Men, quoted in paragraph 9 of the complaint, and being excerpts from a letter of November 30, 1934, as therein stated, is the substance of an agreement entered into between defendant, plaintiff and intervener dated May 4, 1937, which was later incorporated into the said Firemen's Agreement effective June 1, 1939.

17. There is an actual controversy between plaintiff [51] and defendant and between plaintiff and intervener as to matters set forth in the pleadings

of the parties and intervener, including controversy as to the validity of Article 51, section 1, Article 43, section 1 to section 4, inclusive, and section 6, Article 37, section 15, Questions and Answers (a) and (b), and Addendum to Article 43, Application of Mileage Regulations to Part-Time Men, all as set forth in said Firemen's Agreement referred to in paragraph 5 of these findings.

From the foregoing Findings of Fact, the court makes the following

CONCLUSIONS OF LAW

- 1. This action involves laws regulating inferstate commerce; this court has jurisdiction, and the case is a proper one for the declaration, as herein set forth, of the rights and other legal relations of the parties.
- 2. The Firemen's Brotherhood (including its agencies, including intervener) is not precluded by the Railway Labor Act, or otherwise, from representing, and it has the lawful right to represent, its own members and any other individuals who desire its services in presenting any type or class of individual claim or grievance against defendant arising out of any engine employment, including employment as engineer, and the Firemen's Brotherhood (including its said agencies) has the lawful right to handle such claims and grievances to a conclusion, and the Engineers' Brotherhood does not have the sole or any right of representation in any such cases against the will of the individual claimant.

- 3. (a) Article 43, sections 1, 2, 3, 4, and 6, and Addendum to Article 43, Application of Mileage Regulations to Part-Time Men, are conditions under which engineers may [52] exercise the privilege of displacing firemen and of continuing such displacement.
- (b) The Questions and Answers, appended to Article 37, section 15, of the Firemen's Agreement, are reasonably necessary for the purpose of protecting the craft of firemen in the exercise of the rights provided for in said Article 37, section 15, and have a reasonable relation to the firemen's seniority rules.
- 4. The provisions of the Firemen's Agreement referred to in paragraph 3 of these conclusions are within and affect the jurisdiction and powers of the Firemen's Brotherhood.
- 5. Defendant and intervener are entitled to judgment that:
- (a) Intervener has the lawful right to represent members of the Firemen's Brotherhood and any other individuals who desire its services, in presenting any type or class of individual claims or grievances aganist defendant arising out of engine employment, including employment as engineer, and intervener has the lawful right to handle such claims and grievances to a conclusion, and plaintiff does not have the sole or any right of representation in any such cases against the will of the individual claimant.

- (b) Article 51, section 1, Article 43, sections 1, 2, 3, 4, and 6, Addendum to Article 43, Application of Mileage Regulations to Part-Time Men, and Article 37, section 15, Questions and Answers, of the Firemen's Agreement, are, and each and every part of each and every one of them is, valid, and they do not nor does any of them violate either the Railway Labor Act or any other law or infringe any right of the Engineers' Brotherhood or of plaintiff.
- (c) Defendant and intervener recover their costs from [53] plaintiff.

Let judgment be entered accordingly.

Done in open court this 1st day of August, 1941.

HAROLD LOUDERBACK

United States District Judge

Receipt of service.

[Endorsed]: Filed Aug. 1, 1941. [54]

In the District Court of the United States for the Northern District of California, Southern Division

No. 21,301-L

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association,

Plaintiff,

VS.

SOUTHERN PACIFIC COMPANY, a corporation,

Defendant,

GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association,

Intervener.

DECREE

This cause came on to be heard at this term and was [55] argued by counsel, and, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

a. Intervenor has the lawful right to represent members of the Brotherhood of Locomotive Firemen and Enginemen, and any other individuals who desire its services, in presenting any type or class of individual claims or grievances against defendant arising out of engine employment, including employment as engineer, and intervener has the lawful right to handle such claims and grievances to a conclusion, and plaintiff does not have the sole, or any, right of representation in any such cases against the will of the individual claimant.

b. The following provisions in that certain contract, called "Firemen's Agreement," between defendant and Brotherhood of Locomotive Firemen and Enginemen, effective as to rates of pay, October 1, 1937, and as to rules, June 1, 1939, namely,

Article 51, section 1;

Article 43, sections 1, 2, 3, 4, and 6;

Addendum to Article 43: Application of Mileage Regulations to Part-Time Men; and

Article 37, section 15, Questions and Answers;

are, and each and every part of each and every one of them is, valid, and they do not, nor does any of them, violate the Railway Labor Act, or any other law, or infringe any right of plaintiff:

c. Defendant and intervener recover of and from plaintiff their costs herein in the sum of \$72.90.

Dated: August 1st, 1941.

HAROLD LOUDERBACK
United States District Judge

Receipt of service.

[Endorsed]: Filed Aug. 1, 1941. [56]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the above-named plaintiff hereby appeals to the Circuit Court of Appeals, Ninth Circuit, from the final judgment and decree entered against it in this action on August 1, 1941, based upon findings rendered and filed on that [57] day, and from the whole of said judgment and decree:

GEO, M. NAUS

Attorney for Plaintiff

HORN, WEISELL, McLAUGHLIN & LYBARGER

By CLARENCE E. WEISELL

Of Counsel for Plaintiff

[Endorsed]: Filed Oct. 27, 1941. [58]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

The above-named plaintiff, appellant in this action, designates for inclusion in the record on appeal the complete record and all the proceedings and evidence in the action to-wit:

- 1. The complaint;
- 2. The answer of defendant; [59]
- 3. The answer of intervener:
- 4. The findings;

- 5. The final judgment or decree entered on August, 1941;
- 6. The whole of the stenographic reporter's transcript of the evidence and proceedings at the trial:
 - 7. All minutes made by the clerk;
- 8. A transcript of the page of the civil docket relating to this action;
 - 9. The notice of appeal, with date of filing;
- 10. Order for transmission of original exhibits:
 - 11. Stipulation re transcript and cost bond;
 - 12. This designation.

Pursuant to Rule 75(g) of the Rules of Civil Procedure, the Clerk of the District Court is hereby requested to transmit to the Clerk of the appellate court a true copy of the matter designated by the parties.

GEO. M. NAUS Attorney for Plaintiff

HORN, WEISELL, McLAUGHLIN & LYBARGER

By CLARENCE E. WEISELL

Of Counsel for Plaintiff

Receipt of service.

[Endorsed]: Filed Oct. 27, 1941. [60]

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION OF ORIGINAL EXHIBITS

Upon request of the hereinafter consenting signatories:

The Court being of opinion that all of the exhibits received or marked at the trial of this action should be inspected by the appellate court and sent to the appellate court in lieu of copies pursuant to Rule 75(i) of the Rules of Civil Procedure, [61] it is

Ordered that the Clerk of this District Court forward said exhibits to the Clerk of the United States Circuit Court of Appeals, Ninth Circuit, to be held by the latter clerk for the use of the appellate court until the decision of the appellate court on the appeal from the judgment taken by the plaintiff.

HAROLD LOUDERBACK

United States District Judge

By consent.

GEO. M. NAUS

Attorney for Plaintiff

C. W. DURBROW-per A. G. GOODRICH HENLEY C. BOOTH per A. G. GOODRICH BURTON MASON per A. G. GOODRICH Attorneys for Defendant

DONALD RICHBERG

EUGENE M. PRINCE

Attorneys for Intervener

[Endorsed]: Filed Oct. 27, 1941. [62]

[Title of District Court and Cause.]

STIPULATION RE TRANSCRIPT AND COST)BOND

In connection with the appeal taken, or about to be taken, from the final judgment and decree by the above-named plaintiff, it is stipulated:

- The requirement of Rule 75(b) of the Rules of Civil [63] Procedure that the appellant file with its designation two copies of the reporter's transcript of the evidence or proceedings is waived, and the appellant need file no copy with its designation; instead, the one copy of the reporter's transcript filed with the clerk on October 31, 1940, (for the use of the trial judge) and which copy is still on file with the clerk, may be retained by the clerk as one copy, with the same effect as though it were filed by the appellant at this time with its designation and no other copy need be filed; it being understood that the carbon copy thereof now in possession of the appellant may be delivered to the clerk for inclusion by the latter in the certified transcript of the record to be prepared and sent by him to the Clerk of the Circuit Court of Appeals, Ninth Circuit.
 - 2. The appellant need not give a bond for costs on appeal, the requirement of Rule 73(c) for such a bond being hereby waived.

GEO. M. NAUS

Attorney for Plaintiff
C. W. DURBROW

Per A. G. GOODRICH

HENLEY C. BOOTH
Per A. G. GOODRICH

BURTON MASON

Per A. G. GOODRICH

Attorneys for Defendant

DONALD R. RICHBERG EUGENE M. PRINCE

Attorneys for Intervener

[Endorsed]: Filed Oct. 27, 1941, [64]

Docket

21301-L

Title of Case

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMO-TIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COM-PANY,

VS.

SOUTHERN PACIFIC COMPANY GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIRE-MEN AND ENGINEMEN (an unincorporated association),

Intervener.

Court Trial Oct. 1, 1940

Attorneys

For Plaintiff: George M. Naus, Alexander Bldg., SF.

For declaratory relief.

For Defendant: C. W. Durbrow-Henley C. Booth, Burton Mason, 65 Market St.

For Intervener: Eugene M. Prince, 225 Bush St.

Date 1939	Plaintiff's Account		Received	Disburted	
8-12	Deposit		10.00	*.	
9-30	Pd. Treas, U. S.		. 19 . 1 .	5.00	
10-27	- Deposit		5.00		
4				:	
Date 1939	Defendant's Account		Received	Disbursed	
9-27	Deposit		10.00	1.1	
9-28			2.00		
9-30	Pd. Treas. U. S.			7.00	
9-30	Pd. Treas. U. S.	**************************************		5.00	

Abstract of Costs

To Whom Due— Amount—

Receipts, Remarks, Etc. J.S.5-6 [65]

Augr 12 1. Filed Complaint Issued Summons. Sept 1 3. Filed Summons, ex Aug 12. Sept 1 3. Filed Summons, ex Aug 12. Sept 1 3. Filed Stip ex time—plead 27 5. Filed Answer Contact of Motion for leave to intervene of General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen. Lodged proposed Answer of Intervener. Codged proposed Answer of Intervener. Answer Answer Codged proposed Answer of Intervener. Answer Codged	Ang 12 1. 15 Sept 1 3. 15 4.	Filingo—Proceedings		Defendant	
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Sept 10	10			Ord case go off calendar Sept 10 & reset for court trial Oct. 1, 1940			
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	, = ·			Ord trial resumed, testimony & evidence intro, case submitted on briefs to be filed in 30-30-20			
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	55		*	Filed 1 vol. of Reporter's Transcript			
Nov 25	8		ć	Ord case off J. D. Calendar. Filed wiff's brief			
Dec. 5	13		2	10 Filed stip ex time of deft & intervener to serve			δ.
				and nie briefs			

Jan 21 11. Filed defendant's brief. Jan 21 12. Filed intervener's brief. Jan 21 13. Filed intervener's brief. Ja. 7 14. Filed stip ex time of pltff to file reply brief. Mar 4 15. Filed stip ex time of pltff to file reply brief. Mar 31 Ord case submitted. Apr 28 Ord judgt entered in favor of deft & intervener with costs upon findgs to be filed Mailed notice with costs upon findgs to be filed Mailed notice findgs June 13 19. Filed stip ex time of intervener & deft to file findgs La ledged findgs					Clerk	Clerk's Fees	Emalument
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13. 14. 13. 15. 16. 19. 19. 19. 19. 19. 19. 19. 19. 19. 19	Jan	21	111.	Filed defendant's brief.			
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16.	Mar	4	15.	Filed stip ex time of pltff to file reply brief		•	*
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19.			*	findgs			
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			lodged Mailed notice			
	2	23.	Filed stip ex time of pltff to propose amendments			
Aug	-	24.	Filed finds of fact etc			
		25.	Filed decree in favor of deft & intervener with			
		,	eosts . Made judgt roll Mailed notice		2.00	
	13	26.	Filed no to tax costs & memo of costs etc	4		2.00
Oct 27	25	27	Filed pltff's notice of appeal	5.00	1	1.
		28.	Filed designation of record on appeal			
		.53	Filed stipulation re transcript & cost bond	-		
		30.	Filed ord for transmission of original exhibits.			. 1
						[99]

District Court of the United States Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing pages, numbered from 1 to 66, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case entitled General Committee of Adjustment of the Brotherhood etc. Plaintiff, vs. Southern Pacific Co., Defendant, General Grievance Committee of the Brotherhood of Locomotive Firemen etc. Intervener. No. 21301-L, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of seven-dollars and twenty-five cents (\$7.25) and that the said amount has been paid to me by the Attorney for the appellant herein.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 5th day of December A. D. 1941.

(Seal)

WALTER B. MALING, Clerk.

WM. J. CROSBY, Deputy Clerk. [67]

[Title of District Court and Cause.]

TESTIMONY

Thursday, October 10, 1940. 10:00 o'clock A.M.

Counsel Appearing:

For Plaintiff:

GEORGE M. NAUS, Esq., CLARENCE E. WEISELL, Esq.

For Defendant:

BURTON MASON, Esq.

For Intervener:

DONALD R. RICHBERG, Esq., EUGENE M. PRINCE, Esq.

The Court: Proceed with the calendar, Mr. Clerk. The Clerk: General Committee of Adjustment vs. Southern Pacific.

Mr. Naus: The Plaintiff is ready.

Mr. Mason: The defendant is ready.

Mr. Richberg: The intervener is ready.

The Court: All sides are ready. You may proceed, then, [1*] gentlemen.

Mr. Naus: If the Court please, it has been thought by counsel that out of an abundance of caution, although recognizing that the new rules probably do not require a formal jury waiver, with

^{*}Page numbering appearing at top of page of original Reporter's Transcript.

the permission of the Court we would like to join in an express waiver of a jury, and ask that the Clerk enter the waiver in the minutes.

Mr. Mason: That is correct, your Honor.

The Court: If that is satisfactory, let it be entered.

Mr. Naus: At this time, if the Court please, I ask permission to have seated with me at the counsel table, first, Mr. P. O. Peterson, the Chairman of the Plaintiff Association, who perhaps could be considered a party, and also, the only additional one, Mr G. W. Laughlin, who is First Assistant Grand Chief of the Brotherhood of Locomotive Engineers. I gave his name and title to the Clerk.

The Court: There is no objection to their appearing at the table, is there?

Mr. Mason: No, not at all, your Honor. I should like, on behalf of the Defendant to have permission to have seated with me Mr. C. M. Buckley, who is Assistant Manager of Personnel of the Defendant Company.

Mr. Richberg: If your Honor please, I would like to have permission to ask Mr. D. B. Robertson, who is President of the Brotherhood of Locomotive Firemen and Enginemen, and Mr. C. W. Moffitt, who is General Chairman of the Southern Pacific.

The Court: If there is no objection, they may be seated at the counsel table.

Mr. Naus: There is no objection. May I ask also that Mr. Walter Jones, Vice-President of the organization, be permitted to [2] sit at counsel table? The Court: The same rule will be made.

OPENING STATEMENT ON BEHALF OF PLAINTIFF,

By George M. Naus, Esq.

Mr. Naus: Now, if the Court please, I shall make a very brief opening statement, mainly for the purpose of getting before the Court what I deem the somewhat limited issues here, and with your Honor's indulgence, I would like to call attention to two or three very short portions of the statute involved, so that it will help explain the matter of the pleading.

In the first place, this is a suit for a declaration under the Declaratory Judgment Act of Congress to declare the rights and other legal relations of the parties involved, here. It is a suit that was brought by the plaintiff, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company, which is an unincorporated association, and was brought primarily against the Southern Pacific Company as the defendant. By permission of Court, and without objection, the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen have come in and intervened. So we have those three parties before us.

The suit seeks a declaration under what is known as the Railway Labor Act, an Act of Congress originally enacted in 1926, and amended in some particulars in 1934, and the declaration is sought under the Railway Labor Act as amended in 1934. Your Honor will find in the first numbered paragraph of the complaint a citation to the statute involved. The Railway Labor Act is found in 45 U. S. Code—if your Honor has not your copy of the Code convenient, I have an extra copy here, if you desire.

The Court: I can have it secured. 45 what? [3]

Mr. Naus: 45 United States Code, Section 151 and following sections, and I might say that Title 45 of that compilation has never been reprinted since the original enactment of the Code in 1925. So we find this material only in the paper supplement in the back, because it was in 1926, a year after the enactment of the Code, itself.

Now, before turning to the specific allegations of the complaint, and in order to help the Court better to understand them, I will call attention merely to some portions of the Act, itself. The Act is in several numbered sections, and several of them are broken down into a number of subdivisions. I call attention first to Section 2 of the Act, the portion that is now Section 152 of the Code. That provides, in subdivision 1:

"It shall be the duty of all carriers, their officers, agents and employees, to exert every reasonable effort to make and maintain"— Would your Honor prefer to turn to the Code as I call attention to it?

The Court: I can do so.

Mr. Naus: It is sometimes easier to follow. Turn to Section 152 of the Title. It starts off, the subdivision:

"It shall be the duty of all carriers, their officers, agents and employees, to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interrution to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Then, if the Court please, I will turn to subdivision 3:

"Representatives"-

I pause there for a moment because this plaintiff will be found as we go along to come within the designation or definition of "representative" as it is used in the Act; likewise, [4] as to the Firemen Intervener, it will be found that that association is also the representative within the meaning of this Act.

"Representatives for the purposes of this Act shall be designated by the respective parties

without interference, influence, coercion," and so on.

In other words, a command to designate representatives.

Then I invite attention to the opening sentence of subdivision 4:

"4. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any graft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

I read "for the purposes of this Act," because that is the way the Act of Congress reads, but the compilers of the Code have slightly changed it to conform with the grammar of the rest of the sentence. "for the purposes of this Act."

Then I invite attention to what you will find there under Section 151, subdivision 6, the section preceding the one we have been looking at. It is a rather long section.

"6. The term 'representative' means any person or persons, labor union, organization or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them."

The Court: That is 151 straight, not 151-A?

Mr. Naus: No, 151 straight, subdivision 6.

The Court: I have it.

Mr. Naus: Then, if the Court please, I will now turn to Section 151-A, and I might add that it took that subdivision A lettering simply because it was added to the Act, to the Code in 1934, by way of amendment to the original Act, and under the Act. it is really part of the amended Section 2, the subsequent portions of which appear under Section 152. 151-A tells the purposes of the Act. The purposes of the Act are 1, 2, 3, 4, [5] and 5, defining the purposes of the Act, and I simply call attention to that because elsewhere in the Act it speaks of the purposes of the Act. That, if the Court please, in general is the essential portions of the statute to which I wish to call attention before turning to the complaint, and I wish to refrain from arguing the point now, of course, having simply called it to your Honor's attention.

Now, turning to the complaint, paragraph 1 consists of the formal or jurisdictional allegations. In the first instance, this is not the ordinary case of a Federal question, or a question of citizenship, but arises under the eighth subdivision of Section 41 of 28 U.S.C., the one conferring jurisdiction, and it is before your Honor under Federal jurisdiction because Congress has given jurisdiction over any action under a law regulating commerce, as this one does, to this Court.

Next the complaint refers to the Railway Labor Act, and finally there is cited there as part of the formal allegation the Declaratory Judgment Statute.

Paragraph 2 is descriptive of the Southern Pacific for purposes of this case, that is to say, the Pacific Lines, and I think all will agree that it clearly brings it within the definition of a carrier within the Act.

Then in Paragraph 3 we begin to get into or approach the charging part.

"There is, and continuously for many decades"-

The counter pleadings or defense pleadings here deny "decades", or, rather, state "years". It is unimportant which it is. I think all will agree that whatever is referred to in the paragraph has been in effect ever since the Railway Labor Act was enacted. [6]

"There is, and continuously for many decades"—or "years"—there has been, a craft or class of locomotive engineers, now numbering approximately 1500 employees, in the service of Defendant as such carrier on and throughout said Pacific Lines," and so on.

Then beginning on line 16 there is an allegation there that at least 85 per cent. of all of said locomotive engineers—that is, on the Southern Pacific Pacific Lines—

"comprising said craft or class on and throughout said Pacific Lines are members of the Grand International Brotherhood of Locomotive Engineers, a voluntary unincorporated association composed of approximately 60,000 persons throughout the United States and Canada"—

And then: "Plaintiff is a voluntary association," and so on.

Now, there are some denials of portions of paragraph 3, which, when we open the evidence, I am reasonably satisfied will be taken care of, either without controversy or by stipulation.

Turning to Paragraph 4, the allegations of that paragraph are admitted on all sides:

"Plaintiff is, and ever since the enactment of said Railway Labor Act has been, the sole designated representative of said craft or class of locomotive engineers under, and for all the purposes of, said Railway Labor Act, including collective bargaining, and making and maintaining agreements with defendant concerning rates of pay, rules, and working conditions of locomotive engineers. For many years before the enactment of the Railway Labor Act, and ever since, there have been agreements negotiated from time to time between plaintiff and defendant concerning rates of pay, rules, and working conditions of said craft. The last of said agreements was made in writing, effective January 9, 1931, and has been continuously in effect ever since, with occasional amendments and additions."

Next, if the Court please, we come to Paragraph 5, which is also admitted by the pleadings, and simply sets up a portion of the matter contained in the agreement of the plaintiff, in what in the railroad parlance is known as the Engineers' Schedule.

Then Paragraph 6 comes to the matter of the Firemen's Organization. Paragraph 6 is also admitted by the pleadings. [7]

"There is, and at all times herein mentioned has been, a separate craft or class of locomotive firemen in the service of defendant, on and throughout said Pacific Lines, the designated representative of which craft or class of firemen, for the purposes of said Railway Labor Act, is an unincorporated association (hereinafter for brevity called 'said Firemen's Committee') having the common name of General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen. Said Firemen's Committee has never been the designated representative of said craft of engineers."

Then we come to Paragraph 7, portions of which are admitted and portions of which are denied, but as to which I think we will find there is no real controversy between the parties as to what the real facts are.

"Defendant recruits most of the members of its craft of locomotive engineers from the competent members of said craft of locomotive firemen in the order of their seniority of service. The members of the respective crafts of engineers and firemen fluctuate from time to time in correspondence with the volume of transportation business of defendant. As said volume increases, senior firemen are called to service as engineers; as it decreases, junior engineers are demoted to firemen. When employees are serving defendant as engineers, plaintiff is their designated representative under and for the purposes of the Railway Labor Act; when serving defendant as firemen, said Firemen's Committee is their representative."

Then we turn to Paragraph 8, some of which is admitted and some of which is denied by the pleadings, but as to which I think we will find no controversy when we come to the evidence.

"Said craft of engineers represented by plaintiff is the higher paid and older in point of service of the two crafts, as aforesaid. Both crafts are paid for service on the basis of hours served or miles run. As said volume of transportation business fluctuates, it is of economic importance to the craft of engineers represented by plaintiff that the number of members in said craft at any given time should not be so great as to spread the whole volume of work lower than an agreed amount per member of the craft. In said agreement, effective January 9, 1931, the monthly minimum of hours of service or miles run by

members of said craft of engineers has been agreed between plaintiff and defendant."

Then, if the Court please, we come to the main charging paragraph of the complaint, that is, 9, and I would say that as to the first six lines of Paragraph 9, they are denied, but, as [8] your Honor will read it, you will find, this being a declaratory judgment suit, seeking a declaration of legal relations, there is mixed in the pleadings assertions of law and denials of law. It is a peculiar type of pleading under that Act. So those first six lines, being in the nature of legal conclusion, are denied.

Following that, when we come to five or six pages of quotation from the Firemen's Schedule or Firemen's Contract, that is to say, the collective contract made between the Southern Pacific and the Firemen's Group, there is an admission of the correctness of the quotation of those extracts from the Firemen's Schedule and the denial, as I say, is in the assertion of legal conclusions or legal propositions in the opening portion.

Then, if the Court please, we come to Paragraph 10. Those perhaps might be called formal allegations essential to a suit for a declaration; that is to say, Paragraph 10 sets up the controversy between the parties. We assert so and so and they deny it. All of that is admitted, and the only denial is as to that in the nature of a legal conclusion. It is on the fifth line of the last page, page 10, after setting up the controversy that such and such conduct vio-

lates and interferes with our right, we put in the short allegation that they do so violate and interfere. That also is denied, and that, I think you will find, is in the nature of a legal conclusion.

That, if the Court please, is an outline of the case in as brief form as I can put it, and with your Honor's permission I would like to defer to the Defendant and Intervener, as a matter of courtesy, so that they may state any affirmative matter which they have thought fit to put in their pleadings.

Mr. Mason: May it please the Court, I have prepared a [9] brief opening statement for the Defendant, which will indicate the Defendant's position here, and I should like to read it with such interpolations as may be necessary. I will furnish a copy to the Reporter for his guidance.

OPENING STATEMENT FOR DEFENDANT

By Burton Mason, Esq.

Mr. Mason: From an inspection of the pleadings in this case, it becomes apparent at once that there are practically no contested issues of fact. The only matter as to which the pleadings reveal any dispute of fact relates to the number of locomotive engineers in the employ of the defendant railroad company; and the parties have agreed to accept the figures prepared from the company's records, and presented here by a witness for the company, as correct upon that issue. The essential issues are

therefore purely legal issues, arising from undisputed facts.

The parties in interest before the Court are two labor organizations, and an employer which, together with its employees, is subject to the Railway Labor Act. One of these two organizations, the plaintiff, represents the craft or class of employees of defendant designated as locomotive engineers; and that organization has entered into a collective bargaining agreement with defendant which contains provisions governing the wages, hours of work, other, working conditions, and various other general incidents of the employment of engineers on defendant's lines.

The other organization, the intervener, similarly represents the craft of locomotive firemen employed by defendant, and has entered into a corresponding agreement governing the wages and other general incidents of the employment of such firemen.

The plaintiff organization properly claims the exclusive right to represent the entire craft or class of engineers for purposes of collective bargaining with defendant. The intervenor [10] claims, with equal propriety, the exclusive right to represent the craft or class of firemen for a similar purpose. Neither organization appears to challenge the other's claim in this respect; and the defendant does not challenge the claim of either.

The claim of the plaintiff, as expressed in its complaint, goes further than the claims of general representation of all the craft of engineers. Plaintiff

also claims, by paragraph 9 and paragraph 10 of its complaint that the defendant and the intervener. in having entered into the agreement covering the · firemen's craft, have infringed plaintiff's exclusive right to represent engineers, because there are included in the firemen's agreement certain passages or clauses in which engineers are mentioned. These provisions in the firemen's agreement are set forth at length on pages 5, 6, 7, 8 and 9 of the complaint. Plaintiff particularly asserts that when an individual who is serving as an engineer presents an individual claim upon the defendant, arising under the rules of the engineers' working agreement-for example, a claim for additional pay under a rule of that agreement asserted to apply to his particular service—that claimant must be represented by plaintiff, and not by any other organization such as intervener.

The essential fact, which is developed at some length in the pleadings and will probably be fully discussed in the evidence, is that while the two crafts—engineers and firemen—are separate and distinct from the standpoint of craft representation and collective bargaining, they are not so completely distinct in so far as concerns the men who actually serve as engineers and firemen. Every fireman is potentially an engineer; and many men now serving as firemen have seniority as engineers and would be serving as such, if the traffic volume [11] were sufficient to require; while many more men, now in the ranks of firemen, are qualified as engi-

neers but do not have seniority dates as such because no need for their services as engineers appears to have arisen so far.

Many men, during the course of the calendar year or even during the same month, serve as both firemen and engineers. When traffic is heavy, and more engineers are needed, they move up in accordance with their seniority as engineers; but when traffic falls off, they are cut off, as the saying goes; and they then revert to firing service.

Generally, men are sent up, that is, promoted to engineers at the request of the company when it finds more are needed. They are cut off, that is, demoted to firemen, when the Local Chairman of the Engineers' Organization so demands upon finding that the average earnings of the group are falling below a prescribed standard.

It is this continuous back and forth movement of the men in the two crafts, from one to the other, that really lies at the bottom of the dispute in this case. An individual is today an engineer, working under the engineers' agreement; and his right to work, his rate of pay, and all the other incidents of his employment, including the limitations if any upon the total earnings he may accumulate, are determined by the engineers' agreement. But tomorrow that same individual may be cut off as an engineer. If he wishes to work, he can do so only as a fireman. Then the conditions governing his rights, wages, etc., will all be determined by the firemen's agreement.

The clash of interest, as between the two organizations, arises because of two things. First, the individual whose case we are discussing is probably a member of one or the other or- [12] ganization. If he is a member of the firemen's organization, he naturally wants that organization to handle for him any individual claim or dispute he may have with his employer, whether the dispute concerns his service as engineer or fireman. As stated above, however, plaintiff claims that he cannot in such a case be represented, except by plaintiff, if the claim or dispute is based upon his service as an engineer; and plaintiff particularly asserts that the contrary provision, found in Article 51, Paragraph 1, of the firemen's agreement (quoted on page 5 of the complaint) which permits an engineer to be represented. by the firemen's organization in the handling of suchan individual claim is an unlawful infringement. Both defendant and intervener take a position opposite to plaintiff in this regard.

The second cause for the clash of interest between the organizations arises as follows: The individual whose ease we are discussing can revert to firing service, when cut off as an engineer, only because of a right to do so preserved for him by agreement. That right permits him to become a senior fireman, and therefore involves the displacement of some other fireman his junior. It can be exercised only if certain prescribed conditions are satisfied. Since the firemen, through the intervener as their chosen representative, admittedly have the exclusive right to negotiate and agree upon the conditions under which anyone may qualify for and enter service as a fireman, those conditions to be effective must and do appear in the firemen's agreement.

The most important condition attached to the right of displacement upon demotion is of course that the demoted man who is sent back firing no longer has a chance to make adequate earn- [13] ings as an engineer. The firemen's agreement therefore states at what level of earnings among those serving as engineers a junior engineer may be cut off and become immediately eligible to step in as a senior fireman; and correspondingly, at what level of earnings among the engineers the junior engineer who has thus been demoted is no longer eligible to continue as a fireman, but must again be promoted to engineer service. If these conditions were not expressed in the firemen's agreement, then the engineers by changing the earnings level at which men might be cut off or retained could force men into the firemen's ranks, and keep them there, without the firemen or their representatives being able to take any steps at all to protect or preserve the working conditions of their own craft.

The plaintiff contends, nevertheless, that in having embodied in the firemen's agreement the conditions under which a man may revert to and remain a senior fireman instead of continuing to serve as a junior engineer, the employer and the firemen's organization, as the parties to that agreement, have undertaken to prescribe the conditions under which

the man may become and continue as an engineer, and have thus infringed plaintiff's exclusive right to bargain collectively for engineers.

As we shall show, this contention depends upon a confusion of two situations: one created by the engineers' agreement, the other by the firemen's agreement; and upon the assumption that a cut-off engineer becomes eligible as a fireman at once. It is quite correct that the engineers' agreement may and should determine when and how men may be cut off or added to the engineers' active list; at what levels of earnings, additions or demotions shall be made. The firemen's agreement determines only when and how the men who are cut off as engineers may become firemen. Con-[14] ceivably, a man-might be cut off as an engineer, because the average earnings of his group were down to what the engineers' representative considered inadequate; vet this man might not be able to become a senior fireman with right of displacement, because the conditions of the firemen's agreement were not satisfied. This could easily occur if the engineers chose to cut men off when the average earnings fell below the equivalent of 3,000 miles per month, for example; while the firemen refused to readmit such cut off men to their own ranks, unless the average of the group of engineers fell below 2600 miles per month. The fact is that unless the two working agreements were and continued to be identical in this respect, a junior engineer could be cut off as an engineer, but still be ineligible to go back firing.

The defendant, as the employer, is of course an. interested and necessary party here, because: (1) it is a party to both working agreements, and believes that both are lawful; (2) it wants to continue to deal with these organizations, so long as they are the craft representatives, and the representatives of the individuals comprising their membership, in accordance with the requirements of the Railway Labor Act. It must perform its public obligation as a common carrier, and operate its trains and engines with enginemen who are fully and properly qualified for that service; and it obtains these men. from the membership, largely, of the two organizations involved in the case. For its own protection, defendant must know with certainty how and when men for engine service may be called to protect that service, and who is their lawful representative in determining the conditions under which they may be called and required to report. [15]

OPENING STATEMENT FOR INTERVENER, By Donald R. Richberg, Esq.

Mr. Richberg: May it please your Honor, in behalf of the Intervener in this case, I would like to endeavor to make perhaps a little clearer the issues which are presented here. Now, there is no real issue as to any vital facts in this case. I think your Honor will have observed from the statement of Counsel for the Plaintiff and Counsel for the De-

fendant Railroad an agreement upon that point. Although there are certain denials in the answer of the Railroad and in the answer of the Intervener, they concern either denials of allegations that are essentially conclusions or declarations of right or denials of fact that are not material to the final determination of the issues here. Your Honor is presented with practically pure issues of law, not encumbered with any real vital issues of fact, and for that reason I think perhaps a proper part of a statement at this time should be to endeavor to make clear just what those issues of law are. I may say that testimony is of use in this case only perhaps for these purposes. It may help to make clear the meaning of the allegations of the complaint to have testimony showing the practical operating conditions on the railway that produced this particular dispute. It may also help to make clear the meaning of the Railway Labor Act, which your Honor is called upon to construe, and that is perhaps particularly essential in this case because the Act, itself, was drawn up by practical operating men, representatives of the employees and executives of the railroads. It was passed by the Congress at their request as a joint effort to provide machinery for settling disputes, and contains a few terms that might be somewhat ambiguous, or at least not easily understood, unless there were some evidence [16] presenting the normal course of railroad practice.

For example, in one section of the Act it is provided grievances shall be handled in the usual manner. Now, it is known to railroad men what that is, but on the face of the statement, it may not be clear as to what the usual manner is. So for that reason it would seem desirable not to attempt to have this case determined entirely upon the pleadings, and yet, as it does involve issues of law not affected by any issues of fact, we believe it is appropriate to make a motion for judgment on the pleadings, but without asking the Court to pass upon that motion. Perhaps formal making of it might be deferred until after presenting the evidence, but I thought we should at least present it at the present time to indieate clearly our position, which is that this particular proceeding could be decided entirely upon the pleadings, and essentially I think your Honor will find that is where your judgment comes from rather than from any evidence, which will simply clarify, perhaps, the pleadings and the statute.

Now, as to the previous statements, if I may be permitted, I would like to summarize what they amount to, because we have no disagreement with what has been presented here as to the issues before the Court. It is conceded by all parties here that the Engineers' Organization represents the engineers as a craft or class. They have made the contract on this railroad governing engineering service, and it is accepted that they had the right to make that contract. It is also conceded that the Firemen's Organization represents the firemen as a craft or class, and they have made the contract with the Railroad on that

basis, and it is conceded that they have the right to make that contract. When I say they have a right to, I refer and call [17] your attention to the section of the Railway Labor Act, which was brought into the Act admittedly by the amendment of 1934, although the principle was in the Act before that, which will be found in that section of the Act which was the second section of the original Act, and now appears as 152 in the Code. If you turn to the fourth clause, to which counsel for the Plaintiff referred, you will see the second sentence reads as follows:

"The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter."

Now, that follows on the sentence providing:

"Employees shall have the right to organize and bargain collectively through representatives of their own choosing."

And that makes important the admission which I have just made, which is admitted by all parties, the concession that there is no dispute as to who are the representatives of the craft of firemen and the craft of engineers in this case. The Engineers' Organization is representative of the engineers' craft or class: the Firemen's Organization is representative of the firemen's craft or class. What the difficulty in this case arises out of is that which has been referred to by Mr. Mason. There is a field of labor

relations in which both the engineers and the firemen are interested, because of the fact that the firemen go up as traffic increases and opportunities for promotion are provided, and as traffic decreases and there are reductions in force, the engineers go down. In the terminology used, they bump off the senior fireman; that is, they are permitted to displace the senior fireman, and then the senior fireman displaces the man below him, and so they bump down the entire group of firemen so that as a result, at the end of it, some fireman who had a job no longer has a job. [18]

That is a provision which has come into the agreements between the Railroads and the Organizations and been effective for a long time. We shall show your Honor that the privilege of an engineer to be demoted and to take the place of a fireman. to take a fireman's job, to eliminate firemen from their jobs-in other words, that very large privilege and advantage to the engineers which gives them an extraordinary protection to their employmentis one which was granted by the Firemen's Organization and not one which the engineers obtained or could have obtained for themselves, because the determination of who should be a fireman and under what conditions would rest in the contract between the Firemen and the Railroad. Then the evidence will show that as far back as 1907 the Firemen, in their agreements; began to write in provisions permitting engineers to come down when there were

reductions of service, to bump off the firemen, take the firemen's jobs, and push firemen out of employment. That was a matter that was contained in the Firemen's contract for more than twenty years, and I think the evidence will show that it was never written into the Engineers' contract at all until in very recent years. It has been written recently into both contracts, into the Firemen's contract and into the Engineers' contract, and the extraordinary issue presented in this case is that the Railroad Engineers, who have had the privilege all these years, granted by the Firemen to the Engineers, are now claiming the privilege as a right, and are claiming the Firemen have no right to contract as to who shall take their jobs and under what conditions. That is the real issue in this case on that point.

There is another issue in this case which is on the question of representation, and that is one which I can deal with very, [19] very briefly. It is the claim of the Engineers in their complaint, which I can put in simple words outside the formal language of the complaint, that any man who is serving as an engineer who has a grievance must be represented in that grievance by the Engineers' Organization, although he may not be a member of the Engineers and he may be a member of the Firemen's Organization. They claim any grievance which arises under the Engineers' contract or a matter of engineering service the individual, the single employee, although he may not be a member of the Engineers'.

Organization, must accept representation from the Engineers' Organization in the handling of his grievance, and the Firemen will not be permitted to contract with the Railroad that they can represent their own members when they happen to be running as engineers.

In order to explain how that controversy arises, I may point out that this is one of the rare instances in labor relations where we have duplications of membership, and one of the reasons for that is the very fact that firemen go up to become engineers and engineers go down to become firemen. The Firemen's Organization is naturally one of the things they are interested in first, because they start as firemen. When they are through with their firing service, are promoted as engineers, they may become members of the Engineers' Organization. But your Honor will see that over a long period, ten or fifteen years or more, they may have only a little engineering service and be most of the time firing. Furthermore, they have insurance in the Firemen's Organization. For which many reasons could be given, many members in the Firemen's Organization prefer to retain their membership and not become members of the Engineers' Organization. On the other hand, some become members of the [20] Engineers' Organization and retain their Firemen's membership, so some are what are called "double headers": they belong to both organizations. Some of them remain members of the Firemen's Organization, although they are actually serving and have been for years largely as engineers.

Now, that creates this conflict over representation, which is the second conflict which is presented as the issue in this case. There are two conflicts: one over the demotion of engineers to firemen, and the conditions under which is has to take place, and, second, the right of representation.

As I have said, on the first issue the Engineers are claiming the Firemen cannot regulate the provisions of the agreement that determines when firemen shall lose their jobs, which we think almost answers itself.

The second is this question of representation, in which the position of the plaintiff in this case is the Firemen have no right to represent their members if they are engaged in engineering service, and their grievance arises out of some operation in that service. When I say "represent them," I go back to what we said originally: No one claims that the Firemen have a right to write the Engineers' contract or the Engineers have a right to write the Firemen's contract. But after the contracts are written, the rules are laid down, and the schedules are very elaborate and involve many possibilities of misunderstanding in construction. Men are disciplined for faults. All of those amount to what are called grievance cases. A man objects to the treatment he is receiving. Perhaps he has not received . the pay he thinks he ought to have. He puts in a claim for larger pay. Perhaps he thinks he has

been disciplined in a way he thinks unjust. He puts in a claim to have the discipline [21] removed. That is what we call grievance cases, and the vital question-and that is the other issue in this case-is whether a man is entitled to be represented by the organization to which he belongs when he is presenting a personal grievance, an individual claim, or whether he must be represented by the organization that has made and holds the contract with the Railroad. As to that-of course, this is no time for argument of the matter, but I want simply to state in passing that that particular issue happens to have been decided against the complainant in this case, first by the National Mediation Board, which under this law is the director and administrator of this Act, and then arising out of a strike on this Railroad-not a strike, but a strike vote-in 1937, the President created an Emergency Board consisting of two lawyers and the president of a university to hear and pass upon these grievances, the major one of which was this representation question, and that Emergency Board in 1937, sitting here in San Francisco, held unanimously against the complainant organization on the contention it is making here. and in due time we would like to present a copy of the report of that Emergency Board, because it is an administrative construction of the law by one of the bodies provided for in that law for determining the law. While it would not control the decision of a Court as to a matter of right, it certainly will help the Court in determining the administrative construction of the law and the intent and purpose of the law. But when it comes down to precedent, we will also cite to your Honor the fact that the United States Supreme Court, which is a guiding authority, in the Virginian Railroad Case, in passing upon the constitutionality of the Act, has sustained the constitutionality of the Act on the very ground that it leaves open the right of the individual to re- [22] present himself, himself as an individual, or through counsel, or representative of his own choosing. That case is the Virginian Railway Company v. Eastern Federation, No. 40, which is found in 300 United States, 515.

The Court: What is the year?

Mr. Richberg: The October term of 1936, decided in 1937.

Mr. Naus: Decided in March, 1937. That is in 81 L. Ed., if your Honor please.

Mr. Richberg: So on that issue, if your Honor please, we haven't got the faintest idea when it comes to discussing the issue of law—we have a very serious argument to make to the Court that the very basis of the constitutionality of the Railway Labor Act will be questioned by establishing a right in an organization against the right of individual, against the constitutional right of the individual, the right of an organization to represent him willy-nilly and deny him the right to be represented by those of his own choosing. We do not think that is a very serious issue. The plaintiff has lost on all these occasions in which it has attempted to sustain its posi-

tion. It is against the rulings of the National Administrative Board, which is the administrator of this Act, the Emergency Board which was appointed to settle that very question on this Railroad in 1937, and finally the effect of the decision in the United States Supreme Court in the Virginian Case.

So I want to say there is very little, it seems to me, pertinent testimony to meet such a very obvious and clear issue of law. The Act, itself, specifically provides that the man is entitled to representation by representatives of his own choosing, and it is very hard to avoid the clear implication of the Act.

[23]

On this question, however, of the jurisdiction, if we may put it so, of the Engineers to control when engineers shall go down and bump off firemen against our claim that that is the Firemen's business essentially, on that question of overlapping jurisdiction I want to say we do not take the completely-well, I do not say arbitrary-but all-oneway position, completely one-sided position which the complainant takes. The complainant takes the position that the Engineers'-Organization has the exclusive right to determine when engineers shall be demoted and take firemen's positions without regard to the Firemen's having anything to say about the question. We could very properly say, and we will take the position in court, that if there were any exclusive right under the Act, necessarily that exclusive right would lie with the Firemen. It would not lie with the Engineers, because the Engineers according to their own argument, are invading the field of the Firemen, and they would have to come in under the provisions of the Firemen's contract.

As Mr. Mason has attempted to state very briefly, here, your Honor, in order to make it clear, we are not questioning the right of the Engineers to fix the mileage that engineers may run as such and the earnings that engineers may make as engineers, or anything of the sort. But when we reach the provision as to engineers being demoted to firemen, it is essential to the interests of the Firemen to determine when an engineer shall be demoted and when he shall not be demoted if he is going to take away a fireman's job.

Let me put it this way: Suppose you have twenty engineers running, and instead of putting it in mileage, let us put it in terms of money. Suppose they are making, we will say, a mileage which amounts to approximately \$300 a month. Now, if [24] they in their contract are going to increase the amount that an engineer can run in mileage, and therefore the amount he could make, it might increase that amount to where the engineer was making twice his mileage, where he was making twice that amount of money—making, according to this simplified example, but it is a perfectly fair example, \$600 a month. What would be the result? Ten engineers doing the work of twenty engineers. That would mean the other ten engineers would be

out of jobs. They would go down and bump off the firemen and take the jobs of ten firemen, to which they had a right under their seniority.

Thereby, the fireman has a very great interest in whether the engineers properly divide up their work or hog it so the top senior men make the large amount of money that would give them an extraordinary or unfair earning and the other men will be thrown down to bump off firemen.

Of course, that is of interest to the Firemen. The Firemen could perfectly well say in this case, "If. you want to agree with the railroad to run excessive mileage and make excessive earnings, that is your business. You may make such an agreement. But if you are making such an agreement, we will not permit the men you are displacing by hogging the work to come down and take away our jobs. We will only permit engineers who are displaced and come down to take away our jobs when the engineers' work is fairly divided among the engineers who are available. That, I say, in essence, is the position of the Firemen's Organization, that the Engineers can do as they wish in fixing the mileage or earnings. provided it affects only the engineers, but when that is the determination of the basis of which men are demoted and they come down and push, the firemen [25] out of their jobs, then the Firemen say that is primarily the interest of the Firemen, and will insist on a contract with the Railroad that the demotion privilege shall be conditioned on the fact that engineers shall not be running excessive mileage and making excessive earnings.

If your Honor will turn to the complaint which is filed in this case, you will see that that is the exact language of the Firemen's Agreement which is being complained of here. On page 5 of the complaint, under Article 43, "Demotions and lost runs," is the following:

"When from any cause it becomes necessary to reduce the number of engineers on the Engineers' working list on any seniority district, those taken off may, if they so elect, displace any firemen their junior on that seniority list under the following conditions:"

In other words, all the Firemen have agreed with the Railroad is that they will permit engineers to displace firemen if engineers are running reasonable mileage and making reasonable earnings. But they do not permit by this engineers to come down and exercise their right of bumping off firemen, which the Firemen are giving them, if those engineers come down as the result of the fact that the Engineers have made an unreasonable agreement with the Railroad by which they are running unreasonable mileage and making unreasonable earnings, and then throwing the burden of their unemployment upon the firemen.

I would like, if I might, if the Court please, to make the issues in this matter as clear as possible in the opening statement, for this reason: I have been through many years of this controversy. When the Emergency Board hearing was held in San Francisco, we took days taking testimony on this ques-

tion. As a matter of economic justice and fairness, it was entirely appropriate for the Emergency Board sitting there to find out what [26] the fairness and equities of the situation were, to find out who is right and who is wrong, not from the standpoint of strict constitutional right, but from who is being fair and who is not; therefore, such testimony is reasonable. But I think any such effort in this proceeding would be entirely out of place, and that is why I thought the issues should be made clear at the outset. I think if we were to go into the equities of the situation, it would not be difficult to convince your Honor of the equity of the Firemen's position. But that is not what is brought forward in this case. What is brought forward in this case is a claim of a statutory right, an absolute right which is claimed in behalf of the complainant here. That means the complainant has got to go to some place in the law and point to something which gives the complainant that right, because there would be no such right unless it were created by statute. There is no general common law right. Any right brought forward here must be a right created by statute. Therefore, your Honor has necessarily the very narrow question of statutory construction, as to which testimony can be of no value to your Honor from the standpoint of what a witness thinks ought to be done or how he thinks the law should. be written. It is a question of how the law is written, and I feel, under the circumstances, in order to protect the record and to properly play our part!

in this proceeding, we should point out without unduly annoying the Court, counsel, or the witnesses, whenever the testimony tends to stray away from that which will illumine the real issues in this case. I do not think your Honor is going to sit here and listen to all the individual grievances between the organizations and with the Railroad, and so forth, and gain any illumination as to the legal issue in this case, [27] and yet, frankly, I can't see how very much testimony can be presented except testimony of that irrelevant character. And I wish to have it understood in advance that in making any objections to such testimony it is not captious or a desire to confine this hearing or avoid discussions of the equities, and so forth, but merely because of the fact that from considerable experience in this very matter, I know the extent to which it is easy to wander off into bypaths, discuss individual controversies, and waste an enormous amount of time on matters which have no relationship to the issues before the Court. I do not wish to seem to be annoving.

The Court: I hope no counsel will offer evidence here that is not essential to the determination of the issues involved.

Mr. Richberg: I feel we should keep the matter down, as I stated to your Honor at the start. This could be decided, and I think your Honor will essentially decide it, upon the pleadings. But to clarify what the issues are, to clarify the meaning of the

Railway Labor Act, it may be desirable to have certain limited amount of evidence as to the railroad practice here involved.

May I add one further matter: I have not gone into the detail of the Railway Labor Act, but I would like to say one thing at the outset: It is an act which comes very seldom before the Federal Courts—quite different from the National Labor Relations Act. The Railway Labor Act does not provide for coercive processes. It relies on persuasion and agreement. There are, of course, a few rights declared subject to enforcement by judicial process, and so now this matter comes before the Court. But if I may be permitted a personal word, the Act was the product of the organizations, themselves, back in 1923, [28] as the result of general dissatisfaction with the Federal law at that time, which provided for a Railway Labor Board with power to make decisions but none to enforce them, and the organizations, themselves, developed the Railway Labor Act on the basis of applying previous Federal laws to a method of mediation and conciliation. The major purpose of the Act was to promote voluntary adjustment of disputes. I am familiar with this because I was engaged by the organization at the time. When the Act was finally drafted, it was introduced into the Congress, in 1924, and named the Howell-Barkley Bill. The Railway executives who had opposed the Act decided to join us in making a good Act. The railway executives and labor organizations worked on it in 1925 and came to Congress

in 1926 with an agreed Act, which was passed by the Congress with an overwhelming vote, because it had the support of both the executives of the railroads and the labor organizations as their program for peace.

I think that is important because the construction to be given this Act depends on an understanding of railroad practice, railroad methods, and what was intended by this Act. It has been possibly the most successful labor law that was ever enacted, because from 1926 to 1940 there has not been a major strike on a single railroad in the United States, although we have been through terrible times, heavy depression, losses of income, changes, deductions, lowering of production, wages, and all that sort of thing.

In 1934 the employees' organizations went to Congress to obtain a few changes which experience had seemed to make desirable. In that they were assisted by the Federal Coordinator of Railroads and his staff, who were also concerned with the same problem. The amendments were passed without, I will say very [29] serious opposition at that time. It represents—and I have given this little history because I want to make this clear—it represents an extreme effort to rely upon all the sources of voluntary bargaining, of contract and agreement. If the railroads and the organizations cannot decide matters, then the Mediation Board comes in without power to do anything except help bring about a settlement, with the one exception, they can hold an

election to determine who is the representative of the eraft that they wish. They have the help of the Mediation Board or arbitration, and if they do not accept arbitration, then if there is a strike threatened, the President of the United States has power under the law to appoint an Emergency Board, which sits and in thirty days makes its report and recommendations. And I may say, with practically no exceptions, such boards that have been created have had all their recommendations put into effect by the organizations and the railroad afterward, as an expression of the dominant public opinion as to how they should settle their disputes.

As the result of that machinery we have had this wonderful peaceful era on the railroad, and I think, if your Honor please, it is well to point out for that reason—because this is not a matter of litigation, it is not a matter to be decided by trials, decisions of courts; it is a matter to be adjusted by agreement—for that reason there has been very little litigation in the Federal Courts on the construction of this Act, but such as has been litigated, like the Virginian Railroad Case, has emphasized this essential purpose of this Act, that it gives the free right of bargaining, the right of men to select their own representatives, make their own contracts with the railroads, and determine relationships on that basis. [30]

Now, I think it will be perfectly clear to your Honor, if it is not already, with a little evidence in this case it will be perfectly clear if the Engineers and Railroad cannot agree with what the Firemen and the Railroad have agreed, then there is no reason, as a matter of fact, why anyone should interfere with the Railroad and the Firemen making an agreement as to that matter which primarily affects the Firemen's interest, when the Act requires all parties to make reasonable efforts to arrive at an agreement.

Mr. Naus: If the Court please, I will turn to the evidence in a moment, but I would like to clear up your Honor's mind as to one impression which may have been made by Counsel for the Intervener. I think the greatest emphasis—certainly the longest time—was placed and given by him to the assertion that one of the two main issues here was whether the Firemen have the right to have exclusively in the Firemen's schedule the subject-matter when engineers cut off the Engineers' list may go backfiring. There is no such issue in the case. We do not dispute that. That is exclusively their right and their function. There is no controversy about that. So I want no misunderstanding about that.

The Court: In other words, no matter how many they may elect to send down to the Firemen's group, you are not objecting to it?

Mr. Naus: No, I would rather say this. I will put it this way: My position is it is exclusively a function of the plaintiff, here, as representative of the Engineers, to collectively bargain with the Railroad as to when Engineers shall be cut off the Engineers' list. Then I go further and say after

they are cut off the list, that is as far as the Engineers can go. From [31] there on it is exclusively a matter between the Railroad and the Firemen's representative to collectively bargain as to whether or when demoted engineers or cut-off engineers may go back firing. So I would not want any misunderstanding about that or any time wasted on it, because I make no controversy about that.

Also, further, if the Court please, Coursel for the Intervener is quite right in drawing attention to the Virginian Railroad Case, 300 U.S. That is the one case in the Supreme Court that takes up the Act as amended in 1934, sustains, and to some extent construes it. As a matter of fact, it is the principal case on which the plaintiff in this case relies, and when your Honor comes to read it you will find a portion of it that I think has a fairly direct bearing on the litigation before you, and I have taken the liberty of having typed a portion of the opinion in the Virginian Railroad Case, and a footnote to which the Court refers in the opinion, and upon reading that portion you will find that the United States was amicus curiae in that case, and that the Court, in writing the opinion through Mr. Justice Stone leaned heavily upon the brief of the United States as amicus curiae. I have obtained a copy of that brief from the Library in San Francisco, and I have had typed a full copyof the portion of the brief to which the Court's opinion is addressed, and merely for convenience in reading the case and having it before you, I

hand that up; and for convenience of counsel, instead of lugging books around, I will hand one to each side. I will pass any argument on it at this time, however.

Now, if the Court please, we will proceed with the evidence, and you will have no fear of my rambling off the issues, I assure you.

I offer, first, the Engineers' Contract. I might say [32] everybody on both sides is familiar with it, and we are waiving all questions of foundation, and we are putting it in without further proof.

The Court: No. 1 in evidence.

(Agreement between Southern Pacific Company, Pacific Lines, and Brotherhood of Locomotive Engineers, effective January 9, 1931, was received in evidence and marked "Plaintiff's Exhibit No. 1.")

[Set out at end of Reporter's Transcript, page 326 of this printed record.]

Mr. Naus: Similarly, I offer the Firemen's Contract.

The Court: Plaintiff's No. 2.

(Agreement between Southern Pacific Company, Pacific Lines, and Brotherhood of Locomotive Firemen and Enginement, effective, rates of pay, October 1, 1937, rules, June 1, 1939, was received in evidence and marked "Plaintiff's Exhibit No. 2.")

[Set out at end of Reporter's Transcript, page 468 of this printed record.]

Mr. Naus: I might say, your Honor will observe on the outside front cover of each a printed date. I think it will appear as the evidence goes on these are only printed every so many years, and counsel will agree, I take it, that these that I offer in were the last printed schedules:

The Court: In other words, there has been no modification of those contracts?

Mr. Naus: I would not put it quite that way. Modifications go up in typewriting or exchange of letters in some minor particulars, but it is only every so often that they revise the contracts in new printed forms.

The Court: You can't do that, then, until the current case is ended.

Mr. Naus: No, I think counsel will agree that for purposes of the present case, these contracts may be taken as complete contracts, is that correct!

[33]

Mr. Mason: I think that is correct.

Mr. Richberg: I think so far as the issues of this case are concerned, there is no charge, if it please the Court. May I suggest that Exhibits 1 and 2 be identified in the record by the dates?

Mr. Naus: All right. The Engineers' was offered first. That was No. 1, Mr. Clerk. That bears a printed effective date January 9, 1931. No. 2, the Firemen's contract, has two separate effective dates. As to rate of pay, the effective date is October 1, 1937. As to rules, the effective date is June 1, 1939.

Mr. Mason: May I interrupt a moment, Counsel?

Mr. Naus: Surely.

Mr. Mason: Your Honor, the Engineers' contract is referred to in paragraph 4 of the complaint as having been continuously in effect ever since its date, January 9, 1931, with occasional amendments and additions; both the Intervener and the Defendant admitted the allegations of paragraph 4. So that for the purposes of this case, by the pleadings Exhibit 1 is admitted to be complete.

The Court: Proceed.

Mr. Naus: Now, if the Court, please, departing a little from the usual order, but for the purpose of expedition and moving along more simply and clearly, counsel got together in advance of the trial, here, and it was agreed upon all three sides that the Southern Pacific should prepare certain data or statistical matter, and they have done so, and given us a full opportunity before hand to examine it, and, as I understand, all sides are in agreement upon it. But having been prepared by the Southern Pacific, I ask leave at this time to suspend the plaintiff's case [34] for a few moments and let Mr. Mason, for the Southern Pacific, put a witness on out of order for the limited purpose of putting on that matter.

The Court: There is no objection, if you are all agreed on that matter.

Mr. Mason: Very well, your Honor, we will call Mr. Buckley.

CORNELIUS M. BUCKLEY,

called as a witness-by the Defendant, being first duly sworn by the Clerk of the Court, testified as follows:

Direct Examination

Mr. Mason: Q. Mr. Buckley, by whom are you employed?

- A. By the Southern Pacific Company.
- Q. In what capacity, Mr. Buckley?
- A. Assistant Manager of Personnel.
- Q. You have been Assistant Manager of Personnel since January 1st of the present year?
 - A. That is correct.
- Q. Prior to that time you were employed by the company for a great many years as locomotive fireman and locomotive engineer?

 A. Yes, sir.
- Q. I think your employment as locomotive fireman started in 1905, did it not?
 - A. That is correct.
- Q. And you went through the grade of fireman and were promoted to engineer? A. Yes, sir.
 - Q. Serving with headquarters at Los Angeles?
 - A. Yes, sir, Los Angeles.
- Q. You also served for a short time in 1929 and 1930 as an official on the Los Angeles Division, District Service Inspector and Assistant Trainmaster?

 A. Yes, sir.
- Q. I understand you were also a Local, that is, a Division or [35] lodge official of the Brotherhood of Locomotive Firemen and Enginemen, the Intervener in this case?

- A. Yes. In 1915 I was the President of Lodge 97, and a member of the Local Grievance Committee, and a member of the General Grievance Committee, and in 1916 I was the Chairman of the Local Grievance Committee and a member of the General Grievance Committee.
 - 'Q. That is the Firemen's Organization?
 - A. The Firemen's Organization.
- Q. Now, were you also thereafter a Lodge or Division Official of the Los Angeles Division Lodge of the Brotherhood of Locomotive Engineers, the plaintiff in this case?
- A. Yes, sir. From 1922 to about July 1928 I was the Chairman of the Local Committee of adjustment of the Engineers' Division in Los Angeles, and a member of the General Committee of Adjustment.
 - Q. And again, from 1934 to 1939, is that correct?
 - A. And also during 1934 and 1939.
- Q. You severed your connection with the Local Committee at Los Angeles and with the General Committee of Adjustment when you took your present position, did you not?
 - A. That is correct.
- Q. Is it correct that you have been a member at one time or another of both of the organizations which are here as plaintiff and intervener?
- A. Yes, I was a member of the Brotherhood of Locomotive Firemen and Enginemen between 1906 and 1920, and I have been a member of the En-

(Testimony of Cornelius M. Buckley.) gineers' Organization from 1918, and I am still a member.

- Q. Now, have you prepared or supervised the preparation for the purposes of this case of four statements?

 A: I have.
- Q. Have you before you, Mr. Buckley, a copy of a statement entitled "Number of Employees of Classes Shown, Southern Pacific Lines (including former E. P. & S. W.), as reported to Inter-[36] state Commerce Commission for months shown (I.C.C. Middle-of-Month Count)?

A. This statement was prepared under my direction.

Mr. Naus: So far as the plaintiff is concerned, and for the purposes of this case, the plaintiff will assume or concede that the tables which Mr. Mason has prepared have been properly prepared, and waives foundation.

Mr. Richberg: The same concession, if the Court please.

The Court: It will be received in evidence, then.

Mr. Mason: We offer the statement in evidence as Defendant's Exhibit next in order, No. 3.

The Court: I was going to make each set of exhibits separate.

Mr. Mason: We might as well have one continuous set of numbers.

The Court: It will simply be Exhibit No. 3, then.

(The document in question was thereupon received in evidence and marked "Exhibit 3.")

GENERAL COMMITTEE, B. of L. E.

vs.

SOUTHERN PACIFIC CO.,

U. S. District Ct., N. D. Cal., No. 21031-L

Exhibit No. 3

EXHIBIT No. 3

Witness C. M. Buckley.

NUMBER OF EMPLOYES OF CLASSES SHOWN, SOUTHERN PACIFIC LINES (INCLUDING FORMER E. P. & S. W.); AS REPORTED TO INTERSTATE COMMERCE COMMISSION FOR MONTHS SHOWN (I. C. C. MIDDLE-OF-MONTH COUNT)

Line No.	de Divisions	Sept., 1939	Oct. 1939	Nov. 1939	Dec.	Jan. 1940	Feb. 1940	Mar. 1940	Apr. 1940	May 1940	June 1940	July 1940	Aug. 1940
(a)	, (b)	(e)	(d)	(•)	(f)	(e)	(h)	(1)	w.	·· (k)	. (1)	(m) .	(n).
	/		ICC	REPOR	TING DI	VISIONS	8 121-122	2-123-124					
: >				(Ro	ad and Y	ard Eng	ineers)	-		*	· · · .		
1	Western	324	294	313	297	279	258	256	256	. 260	266	272	300
2	Sacramento	321	310	271	245	207	213	247	225	266	273	. 279	318
3	Salt Lake	158	169	137	124	104	108	113	114	127	124	138	151
4	Portland	199	195	. 199	183	165	170	160	169	188	190	192	209
5	Coast	263	225	216	204	178	166	194	204	205	166	201	. 215
6	San Joaquin		179	153	145	151	151	128	133	141	142	151	165
7	Los Angeles	179	196	199	170	178	188	179	176	181	190	180	173
8	Tueson		.118	128	135	145	152	160	140	138	132	123	111
9	Rio Grande	76	81	83	82	82	92	95	, 87	80	87	79	70
10	System Total	1810	1767	1699	1585	1489	1498	1532	1504	1586	1570	1615	1712
*	, Come Come	- 1	ICC	REPOR	TING DI	VISIONS	8 125-126	3-127-128					
		6			oad and					/			
11	Western	318	319	300	302	269	262.	253	258	254	269	265	288
12	Sacramento	311	296	251	236	199	217	228	` 232	254	278	294	320
13	Salt Lake	170	178	142	132	112	118	113	114	141	127	145	160
14	Portland	223	200	207	183	165	165	177	182	192	196	199	197
15	Coast	248	225	215	190	173	156	202	211	213	175	199	208
16 .	San Joaquin	168	176	152	162 -	165	165	142	149	151	151	164	158
17	Los Angeles	165	208	192	186	179	180	181	171	179	189	177	177
18.	Tueson	132	127	137	139	150	159	153	131	143	156	116	108
19	Rio Grande	80	82	79	81	85	96	97	89	82	88	75	69
20 .	System Total	1815	1802	1675	1611	1497	1518	1546	1537	1609	1629	1634	1685

Source: ICC Wage Statistics, Form B, "Monthly Report of Employees, Service, and Compensation", regularly rendered by Accounting Department, S. P. Co., (Auditor of Disbursements).

FEndowoodl. Filed Oct. 10 1040. Walter D Maline Clay D. T.

Mr. Mason: Q. Mr. Buckley, I show you a statement bearing the title, "Statement Showing, for Southern Pacific Company (Pacific Lines) By Seniority Districts Shown (not including former E. P. & S. W. Lines), Total Number of Engineers on Seniority Lists; Also Total Number of Engineers on Working Lists," and so forth. Was that exhibit prepared by you or under your direction?

A. It was prepared by me from information supplied me by the Superintendent under my direction.

Q. Is there a correction to be made on the face of that exhibit?

A. Yes, sir. There is one correction, Mr. Mason.

Mr. Mason: May we have this statement received as No. 4, if your Honor please, and then we will make the correction so it [37] will appear.

The Court: 'It will be received as No. 4.

(The document in question was thereupon received in evidence and marked Exhibit No. 4.")

GENERAL COMMITTEE, B. of L. E. SOUTHERN PACIFICACO.. U. S. Dist. Ct., N. D. Cal., No. 21031-L

Exhibit No. 4 Witness C. M. Buckley.

EXHIBIT No. 4

STATEMENT SHOWIL FOR SOUTHERN PACIFIC CO., (PACIFIC LINES) BY SENIORITY DISTRICTS SHOWN (NOT INCLUDING FORMER E. P. & S. W. LINES), TOTAL NUMBER OF ENGI-NEERS ON SENIORITY LISTS; ALSO TOTAL NUMBER OF ENGINEERS ON WORKING LISTS ON DATES SHOWN, AND TOTAL NUMBER OF ENGINEERS ON SENIORITY LISTS, BUT NOT

Sub-Column (1)-Engineers on active working list on date shown.

Sub-Column (2)-Engineers not available, account on leave of absence, sick leave, or employed as organ

2:		_		, SENIORITY DISTRICTS															1			
-	No.	(b)	Turson (c)	Los Angel	•	Coast (e)		osquin f)		tockton (g)		estern (h)		amento.	Shasta (j)		Portland (k)	Sa Lake		East Salt Lake		OTALS
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_	3,	On Seniority List July 1, 1940	189	245		297 292		00 ·		137		45		87	174	,	250 245	112		86 84		343
		(n)		(m) (c		(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)		- (1)				04	2,	307
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18	3	April 1, 1940 155		189	. 213	11	129	4	64	0	308	30	133				,		. 72	. 1	1,586	11
19	1.	April 15, 1940 140	11	188	213	13	133	. 7	64	5	312	26	145	30	131 16 116 23	172 183	16	57 8 61 5	41	3	1,592	. 14
21	,	May 1, 1940 143	11	191 . 1	229	12	139	7									24 .	. 61 3	. 41	3 .	1,596	14
21		May 15, 1940 148		196 1		15	143	6	69	. 7	306 310	30	153 159	28	120 . 30	202	. 19	66 . 10	49	. 6.	1,667 >	16
2	2	June 1, 1940) 13	203 2					***			20			126 24	205	23	69 7	53	. 4	1,705	16
2		June 15, 1940 154		208 2		12	144 155	10	67	13	295	43	157	30 .	125 31	212	. 41	64 . 8	o 49	. 7	1,690	.23
-		•			200	10	100	10	74	. 6	. 281	57	159	36	128 23	212	29	55 · 10	50	6	1,706	22

EXHIBIT No. 4

STATEMENT SHOWING, FOR SOUTHERN PACIFIC CO., (PACIFIC LINES) BY SENIORITY DISTRICTS SHOWN (NOT INCLUDING FORMER E. P. & S. W. LINES), TOTAL NUMBER OF ENGINEERS ON SENIORITY LISTS; ALSO TOTAL NUMBER OF ENGINEERS ON WORKING LISTS ON DATES SHOWN, AND TOTAL NUMBER OF ENGINEERS ON SENIORITY LISTS, BUT NOT AVAILABLE FOR REASONS STATED.

Sub-Column (1)-Engineers on active working list on date shown.

Sub-Column (2)-Engineers not available, account on wave of absence, sick leave, or employed as organization or company officials.

		. *	,						•4	SENIORI	TY DISTRIC	TS			*	1 -							1 -	
No. (a)	(6)	Turson (e).		os Angeles (d)		ast e)		Josquin (f)		tockton (g)		stern-		mento I)		nasta (j)		rtland (h)		West dt Lake . (1)	. OF	East alt Lake (m)	,	OTALS
1 2. 3	On Seniority List July 1, 1939 On Seniority List Jan. 1, 1940 On Seniority List July 1, 1940	198 196 189		255 250 245	-20 -20	297	2	201 200 200	1	136 138 137		31 46 45	29	93 92 87	1	63 76 74	. 2	52 50 45		116 112 109		88 86 84	2	2,330 2,343 2,307
4 5	September 1, 1939 101 September 15, 1939 136		(1) 196 221	-21	274 285	7 8	(1) 173 178	(2) 7	94	10	318 319	(2) 20 19	190 188	(2) 44 40	(a) 123 140	(2) 21 39	(1) 220 223	26 32	(1) 88 78	(a) 8	59	5	1,836	20
6	October 1, 1939 133 October 15, 1939 120		222		272 269	11 9	189 179	5 4	92	10 9	297 290	41	183 185	36 36	136 129	19 26	226 224	39 38	.87	· 11 12	62 68 66	5 9	1,922 1,905 1,847	
9	November 1, 1939 134 November 15, 1939 135	. 17	$-\frac{206}{201}$	8	256 250	10 11	177 164	4	89 82	7 5	322 322	16 13	182 167	.33 28	141 137	26 19	226 210	27 19	91 70	12	62 54	9	1,886 1,792	16 13
10 .	December 1, 1939 117 December 15, 1939 133	. 15	192	11	243 224	13	161 151	4	74 76	0	326 302	12 36	154 150	25 30	121 118	13 18	197 195	· 24 21	62 62	14 12	49 50	3 2	1,696 1,645	13 16
12	January 1, 1940 138 January 15, 1940 137 February 1, 1940 146	11	206 195 203	12	228 213	9	149	4	69 70	9	313 323	25 15	143 136	36 27	118 98	° 31 17	195 178	37	53 55	10 10	42 38	2	1,654 1,591	19 12
15	February 15, 1940 162 March 1, 1940 169	12	203	9	202 202 199	9 9	140 139 131	3	66 64 60	2	325 322 319	13 16	130 132	34 28	100	15	188 183 .	13	.67 56	12 5	43	3 2	1,610 1,603	13 11
17	March 15, 1940. 157 April 1, 1940. 155	11,	186	9	203	13.	124 129	4	65 64	4	321	19 17 30	145 145 133	36 27 30	108 117 131	15 13 16	176 172 172	14 12 16	75 54 57	7	40 42	1	1,616 1,586 1,592	13
19; 20	April 15, 1940 140 May 1, 1940 143	11	188	11 .	213 229	13 12	133 139	7	64	5	312	26 30	145 153	24 .	116	23	183	24	61	5	41 41 49	. 3	1,596	14 · 14 · 16
21	May 15, 1940 148 June 1, 1940 140	13	196 203	25	230	15	143	6 11	66	7 13	310 295	28 43	159 157	27 30	126 125	24 . 31	205 212	23	69	7 8	53	4	1,705 1,690	16 23
23 24 25	June 15, 1940 154 July 1, 1940 151 July 15, 1940 127	16	208 216 216	20	230 243 254	15 15 .	155 . 158	9	74 73	6	281 285	57	159 151	36 40	128 · 122	23 25	212 220	29	55 64	10	50 53	6	1,706 1,736	22
.6 .7	August 1, 1940 112 August 15, 1940 95	35	· 199	22	257 270	10 · 9 11	160 176 179	8	73 85 85	9	293 287 286	45 51 52	159 199 206	43 21 32	128 130 132	26 15 22	209 222 237	32 36 44	69 .85 71	10	57 58 62	. \(\begin{pmatrix} 7 \\ 15 \\ 6 \end{pmatrix}	1,745 1,810 1,833	23 23 25

[Endorsed]: No. 21301-L. Exhibit No. 4. Filed 10/10/40. Walter B. Maling, Clerk. By Harry L. Fouts, Deputy Clerk.

Mr. Mason: Q. Now, what is the correction that is to appear on the face of No. 4?

I will ask the parties to take note of this. It is a very slight correction.

A. If you will refer to line 2 on column E, the figure "292" there shown should read "297." Also on line 3, column E, the figure "297" there shown should read "292".

The Court: Line E?

The Witness: Line 2, under the heading "Coast".

Mr. Naus: Perhaps I could help. You have the heading "Coast" there, the third column; the first figure under that is "297".

The Court: That is correct.

Mr. Naus: The next two should be transposed. The "292" should become "297", and the "297" should become "292".

Counsel, before Mr. Mason proceeds, I notice in the furthest right-hand column there, the heading "Totals", the first three lines have not been figured in. I would like permission to insert the pencil totals subject to anybody making the correction if they find the total wrong.

Mr. Mason: I would be glad to have that done.

Mr. Naus: The totals, in the top three lines, in which the witness has just made a correction, I believe the first total should be 2330.

The Court: Is that under "A"?

· Mr. Naus: "N", the total away over to the extreme right, the top three figures. [38]

The Court: 2330.

Mr. Naus: And I believe the second line should be totaled 2343, and I believe the third total should be 2307. That is giving effect to the correction over there, and that, of course, being purely mathematical, is subject to correction at any time.

The Court: I suppose that can be placed on the original in the hands of the Clerk?

Mr. Mason: So stipulated.

Q. Mr. Buckley, have you before you a statement bearing the title "Number of Firemen on Seniority Districts as Shown Available for Promotion as Engineers August 15, 1940, But Who Have Not Yet Secured a Seniority Date as Engineer"?

A. Yes, sir.

Q. That statement was likewise prepared under your direction? A. Yes, sir.

Mr. Mason: We offer the statement as Exhibit No. 5.

The Court: So received.

Mr. Mason: Q. Mr. Buckley, have you before you a statement entitled "Statement Showing Number of Locomotive Miles Accumulated on Southern Pacific Lines (including former E. P. & S. W.), by Months, For Each Division, and in Total," and so forth? A. Yes, sir.

Q. Was that statement prepared under your direction? A. Yes, sir.

Mr. Mason: We offer the statement just referred to as No. 6.

(The documents in question were received in evidence and marked, respectively, "Exhibit 5" and "Exhibit 6.").

EXHIBIT No. 5

GENERAL COMMITTEE, B. of L. E.

VS.

SOUTHERN PACIFIC CO.,

U. S. District Ct., N. D. Cal., No. 21031-L

Exhibit No. 5 Witness C. M. Buckley.

NUMBER OF FIREMEN ON SENIORITY DISTRICTS AS SHOWN AVAILABLE FOR PROMOTION AS ENGI-NEERS AUGUST 15, 1940 BUT WHO HAVE NOT YET SECURED A SENIORITY DATE AS ENGINEER

Seniority District				-		Numl
Tueson			0			25
Los Angeles	untel carantesta	N155-115-m-1-15		h.		9
Const						. 14
San Joaquin						25
Stookton			******************************			0
. Western						49
Sacramento			*			- 11
Shasta	7.0	***********	21 .			0
•Portland				,		21.
West Salt Lake	***************************************				* *	9
East Salt Lake					•	-18
76	457				3	-
Total	~ W.				y.	181
*						4

⁶7 firemen securing a seniority date as engineer between August 15 and 31, 1940, not counted.

[Endorsed]: Filed Oct. 10, 1940. Walter B. Maling, Clerk. By Harry L. Fouts, Deputy Clerk.

GENERAL COMMITTEE, B. of L. E. vs.
SOUTHERN PACIFIC CO.,

U. S. Dist. Ct., N. D. Cal., No. 21031-L,

Exhibit No. 6 Witness C. M. Buckley

EXHIBIT No. 6

STATEMENT SHOWING NUMBER OF LOCOMOTIVE MILES ACCUMULATED ON SOUTHERN PACIFIC LINES (INCLUDING FORMER E. P. & S. W.), BY MONTHS, FOR EACH DIVISION, AND IN TOTAL: PERIOD SEPTEMBER, 1939-AUGUST, 1940.

Line No. (a)	Month (b)	Western (e)	Secremento (d)	Salt Lake	Portland (f)	Comi (g)	San ' Joaquin (h)	Los Angeles (A)	Turron (j)	Rio Grande (k)	TOTAL (I)
1	September, 1939	613,808	763,417	493,188	376,093	547,871	280,241	478,778	371,142	266,856	4,200,394
2	Motor Cars	3,550	· - ·	•			7,019		12,054		22,623
3/	October, 1939	634,270	754,377	501,090	.358,190	542,368	297,177	507,418	401,045	282,528	•4,278,463
4	Motor Cars	918			_	. ^	7,515	•	12,288	_	20,721
5	November, 1939	555,528	653,272	389,309	337,791	499,296	261,314	461,423	372,169	262,660	3,792,762
6	Motor Cars	:			_	_	4,002		11,544	-:-	15,546
7	December, 1939	549,060	635,964	360,915	338,904	478,092	258,166	442,214	413,620	282,139	3,759,074
8.	Motor Cars	_	-	- 64	_	_	2,622		11,844		14,466
9	January, 1940	521,865	566,577	325,753	320,221	453,923	224,657	436,919	434,987	289,796	3,574,698
10	Motor Cars		,	_		-	4,140	_	. 7,328	/	11,468
11	February, 1940	472,831	526,190	301,902	294,995	410,302	196,558	420,226	455,857	294,150	3,373,011
12	Motor Cars		_		_		3,933	_	4,900		8,833
13	March, 1940	503,609	600,292	340,014	318,652	445,377	222,263	451,050	479,475	319,624	.3,680,356
14.	Motor Cars		_			_	4,278	_	6,542		10,820
15	April, 1940	508,012	.627,620	356,912	328,506	471,450	225,223	441,733	425,946	299,527	3,684,929
16	Motor Cars	· · · · ·		_	_	_	4,002	-	2,810		6,812
17	May, 1940	529,781	688,801	394,689	347,727	488,365	241,206	457,446	420,877	289,979	3,858,871
18	Motor Cars	_		_		_	4,278		2,704		6,982
19	June, 1940	543,433	661,061	387,078	354,277	462,281	242,786	469,534	467,523	303,967	3,891,940
20	Motor Cars		_		· · _	· —	4,140	-	2,461		6,601
21 -	July, 1940	588,028	742,453	457,546	364,713	515,928	267,803	452;054	386,494	273,769	4,048,788
22	Motor Cars		_		_		4,278	. —	6,448	****	10,726
23	August, 1940 '	634,741	828,149	470,046	412,216	563,655	288,800	468,512	368,202	263,690	4,298,011
24	Motor Cars Total						4,278		5,952		10,230
25 · 26		6,654,966	8,048,173	4,778,442	4,152,285	5,878,908	3,006,194 54,485	5,496,307	4,997,337 86,875	3,428,685	46,441,297 145,828

Source: Accounting Department (Auditor of Equipment Service Accounts) Form 521, "Divisional Operating Statistics".

[Endorsed]: Filed Oct. 10, 1940. Walter B. Maling, Clerk. By Harry L. Fouts, Deputy Clerk.

Mr. Mason: Unless your Honor has some questions as to the purpose of the exhibits, I will now withdraw the witness. As Mr. Naus said, we put them in at this point so that the figures and other information would be available to all parties at the outset of the case.

Mr. Naus: I would just like to ask him to explain to the [39] Court the workings of the Seniority List, one of these statements.

The Court: You may proceed.

Cross Examination

Mr. Naus: Q. Mr. Buckley, taking this long, larger exhibit, Exhibit No. 4, under the legend at the top as to sub-column 1, it speaks of the active working list. Will you explain to the Court and to us what an Engineer's Working List is and what a Seniority List is, and the essential difference between the two, so his Honor will be fully informed?

A. A Seniority List is a list of the names of all men who have secured a seniority date as an engineeer. The Working List represents the number of engineers who are actually working as such, and it does not necessarily include all of those whose names appear on the Seniority.

Q. The Seniority List is a list of all engineers employed by the company classified?

A. Yes, your Honor. They may not at any particular date be employed or actually serving as an engineer.

The Court: Q. But they are classified?

- A. They are classified as such and hold seniority as such.
- Q. The next list, 33, for instance, that means the number actually employed?
- A. I beg your pardon? I do not quite—I didn't get your question, your Honor.
 - Q. Under the second column, what is that?
- A. Oh, I see; the number of engineers not available on account of leave of absence, sick leave, or employed as organization or company officials, but who were eligible to serve as engineers on that particular date.

Mr. Naus: Has your Honor any further questions?

The Court: No further questions. [40]

Mr. Naus: Q. Mr. Buckley, in a broad sense the engineers working list is the list of engineers who are at any given time actually running engine as distinguished from firing, is that correct?

- A. That is correct.
- Q. Those who are on the working list and running engines are necessarily on the seniority list, but some number on the seniority list may be at a given moment off the engineers working list and back firing?

 A. That is right.
 - Q. That covers it rather generally, doesn't it?
 - A. Yes.
- Q. If you will turn to the extreme right hand column of your Exhibit 4, this large document, if

(Testimony of Cornelius M. Buckley.)
for example you turn to line 12, that space

for example you turn to line 12, that space of January 1, 1940, you find in the totals in the right hand column that there are 1654 engineers noted there. Now, that is the total number on the working list as of January 1, 1940; that is correct, isn't it?

- A. That is correct.
- Q. And then in the next column, that 192-
- A. Yes, sir.
- Q. Do you even include a man-like yourself, who is neither firing nor running engine, but nevertheless is on the seniority list, you having gone to work as a company official?

 A. That is right.
- Q. Do you include, for example, Mr. Peterson, the General Chairman of the Plaintiff, here, who is an organization official?

 A. That is right.
- Q. Now, adding the 1654 to the 192 gives a total of 1846; so speaking very broadly, if you subtract that total of 1846 from the second total up above that we have put in in pencil, 2343, the difference between that 1846 and 2343 would indicate the number of men having seniority on the engineers seniority list, but who were cut off the working list and were back firing as of that date?
 - A. That is correct.
- Q. Does that illustrate it quite generally and broadly? [41] A. Yes, sir.
 - Mr. Naus: I think that is all at this time.
- Mr. Mason: It might be desirable at this point to make one further explanation in connection with No. 3.

Redirect Examination

Mr. Mason: Q. Mr. Buckley, Exhibit No. 3 undertakes to show the number of employees classed as engineers or firemen on the so-called I. C. C. Middle-Of-The-Month Count? A. Yes.

- Q. Now, does that include men who are actually serving in the capacities shown on the fifteenth day of the month, or the middle day of the month?
- A. I think, Mr. Mason, if I may be permitted, the best way to explain this particular exhibit would be to quote the rule used in its making.
- Q. Will you refer to the Interstate Commerce Commission rule which is pertinent in that regard, and which states how that particular figure is to be made up?

Mr. Naus: Will you, before he proceeds to read it—I am quite willing and desirous that he read it—but will you cite to his Honor the official and technical citation of the rule?

Mr. Mason: Yes, I can get it here. It is a portion of an order made by the Interstate Commerce Commission on July 17, 1940, dealing with the subject of the revision of rules governing the classification of steam railway employees and reports of their service and compensation. I may say that Exhibit No. 3, as is shown at the foot of the exhibit, is prepared from Form B, which is a report of employees' service and compensation regularly rendered to the Interstate Commerce Commission. The rule which the witness is about to read is a rule

placed in effect by virtue of the Interstate Commerce Commission order of July [42] 17th, to which I have just referred. I do not find any docket number on the Interstate Commerce Commission order; it is simply a general order issued to all carriers.

Mr. Naus: I might say, if counsel is agreeable, I would be perfectly willing that a copy of the rule be prepared by you and just handed to the Clerk.

Mr. Mason: We will give it to him for his use, for copying into the record at this point, if that is satisfactory.

Mr. Naus: That is all right.

The Witness: "Explanatory Instructions Pertaining to Form B"—that is the caption.

"Column 2.—Enter the total number of employees in service or available for service as of the middle of the month. Employees whose duties are such as to make them includable in two or more Reporting Divisions should be included in that division indicated by the greater part of their time during the month.

"The count should not be restricted to employees actually on duty as of the day of the count, but should cover all employees, including employees under pay on vacation or sick leave, as well as 'extra' men in train and engine service, who are subject to call for duty. Employees who are not subject to call for duty, such as

employees not under pay, absent on definite leave, or under suspension, and pensioners not bound to render service, should be excluded."

Mr. Mason: That is all I have, Mr. Buckley.

Mr. Naus: If your Honor will permit me to go back to this Exhibit No. 4—

Recross Examination

Mr. Naus: Q. I notice 11 headed columns, Mr. Buckley. Those are the eleven seniority districts that make up the Pacific Lines; are they, excluding the former E. P. & S. W. Lines?

A. That is right.

Q. Now, at the heading there it speaks of "Seniority Districts," and the tabular matter shows a total of eleven. Will you please give a brief and simple explanation to his Honor with respect [43] to the breaking up of the Pacific Lines into separate seniority districts, their function, purpose, and how they operate?

A. The Pacific Lines, in so far as it may be involved in the present issue, extend from Portland, Oregon and Ogden, Utah, to El Paso, Texas. That length of railway is broken up into eleven divisions, as it relates to the seniority of the engineers and firemen employed on Pacific Lines as shown in this column, here, your Honor, each seniority district having its own name, so it may be distinguished from another.

Mr. Mason: May I continue?

Mr. Naus: You may go ahead.

- Mr. Mason: Q. Is each seniority district, Mr. Buckley, a separate unit apart from each of the others? A. It is.
- Q. And when a man is employed, he is employed in a particular district, is he not?
 - A. That is right.
- Q. Then he acquires seniority there but not on any other district?

 A. That is also correct.
- Q. So a man, for example, who holds seniority on the Coast Seniority District, has no rights on the Los Angeles District, does he?
 - A. That is true.
- Q. Do these seniority districts in a broad sense correspond with the operating divisions, generally speaking, of the company?
 - A. In a broad way they do.
 - Q. They overlap divisions, do they not?
 - A. .. They overlap in some cases.
- Q. Seniority districts are very seldom changed as to their boundaries, are they?
 - A. Very seldom.
- Q. Although operating divisions may be changed from time to time?
 - A. Operating divisions may be changed.
- Q. As an example, do you recall the boundaries of the East Salt [44] Seniority District, the points between which that extends?

Mr. Naus: Mr. Mason, by the way, wouldn't the schedules indicate that?

Mr. Mason: Yes.

Mr. Naus: Why not just call the Court's attention to that?

Mr. Mason: Q. I refer you to Article XXXII., Section 1.

Mr. Naus: Page 92, if the Court please, of the Engineers Schedule. It begins on page 92, rather. I presume since that is already in evidence, it is sufficient for the Court to take notice of it.

A. Between Carlin and Ogden.

Mr. Naus: You call it East Salt Lake.

Mr. Mason: Q. It is identified in the schedule under that name?

A. Under the caption of "Ogden District."

Q. You said, I think, the seniority districts for firemen were the same as for engineers?

A. Yes.

The Court: It would be West Salt Lake, wouldn't it?

Mr. Mason: West of Salt Lake is the district between Sparks and Carlin.

Q. Isn't that right?

A. Sparks and Carlin, Hazen and Keeler would be the West.

The Court: It is called the "Sparks District," here. It is not called the "Ogden District"; it is called the "Sparks District."

The Witness: The Exhibit No. 4 refers to both of them as "Salt Lake" and distinguishes between them by the use of the words "East" and "West." Now, what is shown on the exhibit as East Salt Lake would be the Ogden District described in the engineers' agreement.

The Court: Q. Carlin to Ogden?

A. That is correct. [45]

The Court: Let us proceed.

Mr. Mason: That is all.

Mr. Naus: Q. Those two, the West Salt Lake and East Salt Lake, read in the Engineers' Schedule, "Sparks District" and "Ogden District," respectively, and those are the only differences between the exhibit and the schedule?

A. It is in the name, that is all. There is no difference.

Mr. Mason: Q. The reason that crept in, Mr. Buckley, was that the Ogden District and the Sparks District were parts of the operating division called the Salt Lake Division, isn't that correct?

A. That is how that error was made. Both seniority districts are under the jurisdiction of one superintendent, and it is operated as the Salt Lake Division.

Mr. Naus: One more question, Mr. Buckley:

Q. Speaking of the Engineers' Seniority List, that is commonly referred to colloquially as holding a date, isn't it? When an engineer holds a date (Testimony of Cornelius M. Buckley.)
on his list, that is his order of seniority chronologically?

A. That is right:

Q. It is also a fact, isn't it, that practically all persons on the Engineers' Seniority List hold some seniority as a fireman?

A. Yes, sir.

Mr. Naus: That is all. I will call Mr. Peterson.

PETER O. PETERSON,

Called as a witness by the Plaintiff, being first duly sworn by the Clerk of the Court, testified as follows:

Direct Examination

Mr. Naus: Q. Mr Peterson, you are the General Chairman of the Plaintiff General Committee in this case, are you?

A. I am. [46]

- Q. And have been continuously since when?
- A. Since August 15, 1927.
- Q. You hold a seniority date as a locomotive engineer on the Southern Pacific, Pacific Lines, do you not? Λ . I do.
 - Q. Since when?
 - A. Since September 8, 1907.
- Q. You also hold a fireman's date, seniority date, do you? A. I do.
 - Q. Since when? A. Since May 3, 1903.
- Q. When did you last actually run engine before going into the work of your organization as General Chairman?

 A. August 14, 1927.

(Testimony of Peter O. Peterson.)

Q. Now, just a word or two as to the structure of the plaintiff organization. For convenience I put in your hand Exhibit No. 4, which gives seniority districts, from the heading, and I will ask you, first of all, of what does the membership of your General Committee consist? Who constitute the membership?

A. The Chairmen of our Local Committees. We have a total of fourteen.

Q. Now, there are eleven Seniority Districts. Is there at least one local committee on each Seniority District?

A. That is right.

Q. Are there three seniority districts who have two local committees?

A. That is correct.

Q. Will you state the names of those seniority districts in which the Engineers have two local committees?

A. There is the Sacramento District, the Portland District, and the Coast District.

Q. So taking the eleven seniority districts, and adding three for those who have two local committees, you have a total of fourteen local committees?

A. That is correct. [47]

Q. Each having a Chairman?

A. That is correct.

Q. As I understand it, the fourteen chairmen of those local committees make up the plaintiff here?

A. That is correct.

Q. And you are the General Chairman of that?

A. That is right.

Mr. Naus: Counsel, turning to page 2 of our complaint, I take it we can agree, can we not, that the Grand National Brotherhood of Locomotive Engineers is a voluntary unincorporated association having membership in the United States and Canada? I, in turn, will give you such concessions as you wish about your organization.

Mr. Mason: Yes.

Mr. Richberg: Yes.

Mr. Naus: It will be agreed, will it not, that as of August 31, 1940 that organization I just spoke of had a total membership of 60,224 members?

Mr. Richberg: I do not think there is any controversy over that.

Mr. Naus: Will you join in that stipulation, Mr. Mason?

Mr. Mason: Oh, yes.

Mr. Naus: Q. Mr. Peterson, I am turning to a copy of our complaint here where we start quoting certain matters in the Firemen's Schedules, and there are some phrases in there that I thought it might be well to give some idea to his Honor as to their meaning.

(To the Court) Has your Honor page 5 of the complaint before you? Page 5, line 22.

Q. I see an expression there, Mr. Peterson, "Assigned or extra passenger service." What is the meaning of "Assigned service"?

A. It means engineers assigned to regular trains operating between given points. [48]

The Court: Page what of the complaint?

Mr. Naus: Page 5 of the complaint, line 22.

- Q. Then I notice on lines 23 and 24, Mr. Peterson, the expression, "Pooled or chain-gang freight." What does that expression mean simply?
 - A. It is synonymous. It means the same thing.
 - Q. "Pooled" is a synonym for "chain-gang"?
 - A. That is right.
 - Q. But what does either one of them mean?
- A. It means freight assigned between given points running first in and first out.
- Q. Now, take Line 26. It says "Road extra list." Is that a working list as distinguished from a seniority list?

 A. That is correct.
- Q. Now, on line 31 the expression, "Hired engineers" is used. How are engineers recruited on the Southern Pacific? Are any or many hired as engineers as distinguished from those promoted from the ranks of firemen?
- A. Very few. We have not hired any engineers on the Southern Pacific since 1920.
- Q. Without troubling anyone to turn to the section of the Engineers' Schedule, there is a section of the Engineers' Schedule that agrees on the proportion of hired engineers as against promoted engineers, but in actual practice there have been practically none hired since 1920, is that correct?
 - A. That is correct.
- Q. I notice on page 6, lines 11 and 12, "Sufficient men will be assigned to keep the mileage or equiva-

(Testimony of Peter O. Peterson.)
lent thereof, within certain limitations." In actual practice, in what sense is that word "equivalent" used?

- A. We mean by the term "average equivalent" the total earnings made by all of the men and divided, which gives us the average earnings of each man or engineer.
- Q. You mean you take, you might say, the total of his pay check [49] for the month, no matter how arrived at, and translate that back into miles, do you?

 A. That is correct.
- Q. I notice in line 16, page 6, speaking of regulating limits, in actual practice how does regulation occur? That is to say, how do you regulate the number of engineers on the working list?
- A. We check the earnings for the engineers for a given period to determine if men should be added to or taken from the list.
- Q. Within the scope of the mileage limitations in the Engineers' Schedule?
 - A. That is correct.
- Q. Now, who determines whether men shall be added to the working list of cut off the working list? Is it the railroad management or the Brother-hood of Engineers who determines that, or regulates?
- A. The Chairman of our Local Committee is in charge of that, in conjunction with the carrier.
- Q. Now, I notice on page 6, line 31, the following: "The average earnings between 26 and 35 days

per month." When it speaks of a possibility of 35 days, does that 35 days relate to what the schedule calls basic days?

A. That is correct.

- Q. And that will be fully explained by examination of the schedule, itself, and its definition of a basic day and its other provisions for increasing pay? A. That is correct.
- Q. On page 7, line 13, I notice the expression, "Emergency engineer." What is an emergency engineer?
- A. It means an engineer who is called for service as an engineer when there are no engineers available on the working list.
- Q. Someone who has been cut off as an engineer, perhaps a demoted engineer, who has gone back firing and is not on the working list, is called to run engine because of an emergency, is that correct?
 - A. That is right.
- Q. On page 8, around line 27, as near as I can tell from this, [50] it uses the expression, "Engineers' Extra Board." Is the Extra Board part of the Engineers' Working List?
 - A. That is right.
- Q. On page 9, the top two lines, speaking of making an adjustment at the end of a month or checking period, what is a "checking period"?
- A. It is the period from which we check the earnings of engineers.
 - Q. To see whether they go below the minimum

or above the maximum under the mileage regulation? A. That is right.

- Q. I notice on page 9, lines 13 and 14, "Adjustment for excess mileage." If counsel will permit me to lead, and I am sure they will, occasionally an engineer will exceed the prescribed maximum, and so you make an adjustment the following period by having him run that many miles less?
 - A. That is right.
- Q. And that is what is meant by "adjustment for excess mileage"?

 A. That is right.
- Q. I have just one or two more questions and I can finish with you, Mr. Peterson. In the development of grievances, at least those within the scope of a negotiated schedule, an engineer will complete a run on some day and then when he gets through he turns in a time slip or something of the sort, does he not? A. Yes, sir.
- Q. Tell me the course it takes from there on in those instances where there is a disagreement between the timekeeper, the trainmaster, division superintendent, or someone, and the engineer, as to what he claims. Tell me the course it takes from there on.
- A. Usually the engineer, at the completion of his day or run, files a claim with the Division Superintendent.
 - Q. The claim is just an ordinary time claim?
- A. For service performed. It is made on a prescribed form issued by the carrier.

- Q. Just like a little paper ticket.
- A. If the claim the [51] individual files is not allowed by the Superintendent, the latter will notify the individual engineer that his claim is not allowed, and further state as to what allowance is made. If the individual is not satisfied with the decision, he may handle his own claim further with the Superintendent, or he may turn his—
- Q. One moment before you go on. When you say he may handle his own claim further with the Superintendent, you mean he talks to the Superintendent about it as an individual engineer, is that correct?

 A. Yes, that is right.
 - Q. Proceed.
- A. Or he may turn his claim over to his organization, the local chairman.
 - Q. Yes.
- A. And the Chairman of the Local Committee determines then if it is a claim in his own way.
- Q. In other words, the Chairman makes up his mind as to whether he agrees with the claim made by the engineer before he will present it further?
- A. Yes, and if the claim is turned over to our organization, or the Brotherhood of Locomotive Engineers, he in turn confers with the Division.
 - Q: When you say "he", you mean whom?
 - A. The Chairman of the Local Committee.
 - Q. Yes.
- A. And when they conclude it is a proper claim, they write the Superintendent a letter and ask that

the claim be allowed under a certain rule of the Engineers' Agreement.

- Q. In other words, the Local Chairman, in writing the letter to the Division Superintendent, will cite the particular numbered rule or article of the section under which the claim is made?
 - A. That is right.
 - Q. Proceed.
- A. If the Superintendent agrees with him and allows the claim as presented by the Chairman of the Local Committee, there is no controversy. [52]
- Q. Assume a case where there is a disagreement between them at that point. What is the next step!
 - A. The Local Chairman is privileged to appeal his claim to the Local Committee or to the Chairman of the General Committee.
 - Q. In other words, the Local Committee Chairman will in effect write you a formal letter in the nature of an appeal?
 - A. Our rules provide that if the Chairman of a Local Committee is not satisfied with the Superintendent's decision, he will ask the Superintendent or his representative to join him in a statement of fact pertaining to the claim for submission on appeal.
 - Q. Before proceeding further, in actual practice, then—I know you will permit me to lead, because we are all familiar with this matter—in actual practice, then, if the Local Chairman on one side and the Division Superintendent on the other, disagree

as to the allowance of a claim, they join in getting up a paper that is in the nature of an agreed statement of facts, isn't that correct?

- A. Surrounding the claim, yes.
- Q. Then what does each do with a copy of the agreed statement of facts from that point on?
- A. They address the Assistant Manager of the Personnel Department and the Chairman of the General Committee.
 - Q. A sort of joint letter to the two?
 - A: That is correct.
- Q. In actual practice, with respect to an engineer's claim presented on the Pacific Lines, one copy will come to you as General Chairman and the other will come to perhaps a man like Mr. Buckley, for the Railroad? A. That is right.
 - Q. Then what happens?
- A. The Chairman of the General Committee presents a claim to Mr. Buckley, under that circumstance.
 - Q. Then what happens after presentation?
- A. If the claim is allowed, the representative of the carrier so writes the individual, [53]
- Q. Assuming a case that is disallowed all the way through. Let us find out the successive steps.
- A. If they fail to agree, it is subject to appeal to the Adjustment Board, Division 1 of the Adjustment Board, it is called.
 - Q. That is the Adjustment Board set up under

(Testimony of Peter O. Peterson.)
the Act of Congress known as the Railway Labor
Act?
A. That is right.

Q. Have you described in your series of answers now what might be called the usual manner of handling disputed time claims in railroad operation?

A. I have.

Mr. Naus: You may cross-examine.

Cross Examination

Mr. Mason: Q. Mr. Peterson, in your experience as a General Chairman, it is a fact, is it not, that additions to the working list on a particular seniority district are generally made at the instance of the company, are they not?

- A. No, I do not so understand the rule.
- Q. Isn't it a fact that where the local company official in charge of enginemen thinks that more engineers are needed, he consults with the Local Chairman and asks that more men be added to the working list?
 - A. If it involves a service requirement.
 - Q. That is what I mean.
- A. The earrier confers with the Chairman of our Local Committee.
- Q. Where men are to be cut off the working list, isn't that generally initiated by the Local Chairman after a survey of the earnings?
- A. I would say always, because the carrier appears not to be interested as to taking the number of men off.

- Q. That is also done by cooperation generally, isn't it?
- A. That is the intent of the agreement and the rule.
- Q. You were asked by counsel as to grievances involving claims for additional money. Are there other types of grievances that [54] arise?
- A. Yes, there are personal grievances of the individual pertaining to discipline and so on.
- Q. I understand you to say that such grievances are sometimes handled by the engineer direct with the Division officials?

 A. That is correct.
- Q. I take it that your organization has no objection to an engineer handling his own grievance personally with the Division officials?
- Mr. Naus: You mean, Mr. Mason, as distinguished from doing it through a representative? I just wanted to understand the question fully.
- Mr. Mason: Yes, as distinguished from doing it through a representative.
- A. I believe that is covered by our Section 22 of Article XXXII. I believe the third paragraph of that rule pertains to that.
- Mr. Mason: Q. Yes, I think it does, and you recognize, then, that an individual may handle his own grievance with the Company?
- A. His own grievance, not affecting matters contained in the schedule.
 - Q. If his grievance arises under the provisions

(Testimony of Peter O. Peterson.)
of a schedule, he may still handle it with the company, may he not?

- A. Oh, yes, he has the right to present the claim to the management—in fact, required to.
- Q. Isn't it the fact also that he may handle that claim through the intervention of a brother engineer?
- A. If it involves discipline, they do that sometimes—not very often.
 - Q. He may do so, however, may he not?
- A. That is correct, as far as the schedule is concerned.
- Q. And that brother engineer may or may not be a member of the Brotherhood of Locomotive Engineers? There isn't any requirement that he be a member of the Brotherhood, is there?
 - A. If it in- [55] volves a personal grievance he may have anyone.

Mr. Naus: By the way, Counsel, I suppose we will all agree there are a small number of engineers and a small number of firemen who are not members of either organization?

Mr. Richberg: Yes, I think we can agree there are a few who are not members of either.

Mr. Naus: The exact number is unimportant. There are some.

Mr. Mason: Q. Now, Mr. Peterson, would there be any objection on your part to the handling by an engineer of an individual grievance of another

- (Testimony of Peter O. Peterson.)
 engineer who happened to be a member of the Firemen's organization?
 - A. If it involves an individual grievance, no.
 - Q. Would there be any objection if the individual representing the claimant happened to be a Local Chairman of the Firemen's Organization?
 - A. Not if it involves an individual grievance or pertains to discipline.
 - Q. Would there be any objection if the individual representing him happens to be the General Chairman of the Firemen's Organization?
 - A. Not if it involves a grievance pertaining to discipline as covered by the third paragraph of Section 22, Article XXXII, Engineers' Agreement.
 - Q. Now, Article XXXII, Section 22, that you just referred to, as quoted in the complaint filed on behalf of your Committee, does not restrict the right of individual representation to discipline, solely; it says, "Any matters pertaining to discipline or other questions not affecting changes in the Engineers' Contract," doesn't it?
 - A. That is correct.
 - Q. And another question not affecting a change in the Engineers' Contract might be a claim for money, might it not?
- A. Well, if it involves a claim for money, that claim must be [56] settled in accordance with the second paragraph of Section 22, Article XXXII, Engineers' Agreement.

Q. If it is so settled, in your opinion, Mr. Peterson, is there any objection to the presentation of the claim by an engineer not a member of the B. of L. E.?

A. You have reference to an individual engineer presenting a claim?

Q. Yes.

A. No, an engineer is privileged to file the claim with the carrier under the rule.

Mr. Richberg: That is all I have, thank you.

Mr. Naus: If the Court please, I forgot to mention at the beginning of the case that counsel, just before Court convened, arranged with the Reporter to supply each of the three sides with a carbon and they agreed that if your Honor desires, the Reporter may leave the original with your Honor, the cost to be divided among the three parties to this case, and your Honor may so order if you so desire.

The Court: I think it is desirable.

Mr. Naus: That will be the order?

The Court: Yes. We will then adjourn at this time until two o'clock.

(Thereupon an adjournment was taken until 2:00 o'clock p.m.) [57]

Afternoon Session-2:00 o'clock.

PETER O. PETERSON.

Cross Examination (Continued)

Mr. Richberg: Q. Mr. Peterson, I am not sure the record/is quite clear. Will you state the exact date on which you became General Chairman, if you know? A. August 16, 1927.

Q. August 16, 1927?

A. That is correct.

Mr. Richberg: I have no further cross-examination.

Mr. Naus: Nothing further. That is all, Mr. Peterson.

The Plaintiff rests.

Mr. Mason: I take it the defendant may proceed?

The Court: You may proceed.

Mr. Mason: I will call Mr. Buckley.

CORNELIUS M. BUCKLEY,

Called as a witness on behalf of the Defendant— Previously Sworn.

Direct Examination

Mr. Mason: Q. Mr. Buckley, in your position as Local Chairman, first of the Firemen and later of the Engineers at Los Angeles, and your present capacity, have you become familiar with the working agreements of these two crafts?

A. Yes.

- Q. The agreements which are in evidence here as Exhibits 1 and 2, and the agreements which preceded them?

 A. Yes, sir.
- Q. Have you made any investigation of the preceding agreements on file in the records of the company so as to familiarize yourself with them?
 - A. To some extent I have.
- Q. Does the Local Chairman, in the position you have filled, undertake the presentation of claims or grievances on behalf of the membership?
 - A. Yes. [58]
- Q. In the manner described by Mr. Peterson in his direct testimony?
- A. Yes. The Local Chairman will handle the grievances of his individual members, or he will handle the grievances of his craft as such.
- Q. As the representative of the entire craft on the Division?
 - A. The entire craft on the Division.
- Q. Now, if there happened to be, when you were Local Chairman for the Engineers' Organization, a member of that organization serving as a fireman, who had been demoted, let us say, and who had a grievance arising out of that service as fireman, would you, as the Local Chairman from the Engineers' Organization represent him in the handling of that grievance?

 A. Oh, yes.
- Q. Supposing there was an investigation into his conduct for the purpose of determining whether discipling should be assessed or not; would you represent him at that investigation?

 A. Yes, sir.

- Q. Have you done so?
- A. Yes, sir, I have.
- Q. Have you any instance that you can call to mind where you have represented the fireman, and the Firemen's Local Chairman has represented an engineer at an investigation?
- A. There is one incident that comes to my mind, although I cannot at this time recall either the date or names, where, in an investigation involving an engineer and a fireman, I, as the Local Chairman of the Engineers, represented the fireman and the Local Chairman of the Firemen represented the engineer.
 - Q. That is because of cross membership, was it!
- A. Cross membership. It happened to be the fireman in the case belonged to the Engineers, and the engineer in the case belonged to the Firemen.
- Q. Now, besides representing the membership and representing the craft as to the agreement, itself, does the Local Chairman of the [59] Engineers have anything to do with the adjustment of the working lists in the seniority district where he is Local Chairman?

 A. Yes, sir, he has.
- Q. Just how does he do that?
- A. Well, we will say that after making a survey of the earnings of the engineers in the various classes of service, in order to keep their earnings from exceeding the maximum permitted by the rule, he will add additional men to that particular service where, if he does not add them, the average

maximum mileage will be exceed by those assigned. Also, he reduces the lists when it is evident to him that the men are not making the equivalent of the minimum mileage permitted.

- Q. When he proposes to add men to the working list in order to reduce the average miles per man, how does he go about that? Where does he get those men?
- A. Well, if he has to add to the extra list, it is necessary to go into the ranks of the firemen and promote firemen or promote men who had previously acquired seniority date as an engineer serving as a fireman. That is, he takes them from the ranks of the firemen.
- Q. Does he do it himself, or does he do it in conjunction with some official of the company?
- A. He does it in conjunction with the Railroad Company.
- Q. He works together with the local official of the Company in charge of the enginemen?
 - A. Yes, that is right.
- Q. When a demotion takes place, when he finds it necessary to cut men off in order to preserve the average mileage above the minimum, does he do that on his motion, or in conjunction with the company?
- A. He does that also in conjunction with the Company; that is, he advises the Railroad Company, the official in charge for instance, that the mileage

is such, the average earnings possible is such, expressed in miles, it becomes necessary for him to reduce the [60] number of engineers on the engineers' working list.

- Q. What is the basic cause for the requirement of additional men at one time, or the requirement for less men and the consequent cutting of the number of engineers at another time?
- A. Well, that is the rise and fall in traffic conditions—you might say the ebb and flow of business.
 - Q. How is engine service measured?
 - A. It is measured by locomotive miles.
- Q. Have you now in mind Exhibit No. 6 that was introduced here?
- A. Yes, I think that is one of the exhibits I prepared.
- Q. That shows the variation in locomotive miles over a twelve-month period?
- A. Yes, and that would represent the rise and tall in business volume.
 - Q. And that is the basic reason, is it, for the requirement of more or less engineers?
- A. Yes, that is the basic reason and the main reason, although additional engineers are necessary to fill the ranks, in the event of death, resignation, pensioners, and so forth.
- Q. That is a more or less steady and continuous upward movement of the men in the lower ranks as opposed to the fluctuations due to fluctuations in locomotive mileage?

A. The main reason is the fluctuation in locomotive mileage and business.

Q. If I understand correctly, the authority which permits the Local Chairman to add to the engineers' working list or cut off men from the engineers' working list is contained in Article XXXII, Section 6, and the various subdivisions of Section 6 of the Engineers' Working Agreement, Exhibit No. 1? A. That is correct.

Q. Article XXXII, Section 6(a) contains this language:

"When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so [61] elect, displace any fireman their junior on that seniority district under the following conditions:

I will ask you this: Has this option or right to displace firemen their junior always been embodied in the Engineers' Working Agreements on the Southern Pacific?

A. No, sir.

Q. When did it first appear?

A. It came in the Engineers. Agreement with the current issue of that agreement, which is dated January 9, 1931.

Q. Now, as the complaint shows, and the answer and the petition of intervention admits, there is substantially the same language contained in Article XLIII of the current Firemen's Agreement, is that correct? A. Yes, sir.

- Q. Does that same language appear in earlier editions or versions of the Firemen's Agreement?
 - A. Yes, sir.
- Q. Does it appear, for example, in the agreement which was effective May 1, 1929?
- A. Yes, sir.
- Q. How far back, if you can recall off-hand, or you can recall as a result of an investigation, has there been a rule similar or substantially the same as the one I have quoted in the Firemen's Agreement?
- A. I think it first appeared in the Firemen's Agreement, the issue of December 1, 1918—I believe I am correct in that.

Mr. Naus: Mr. Mason, I have no objection to departure from the ordinary rules as to permit the witness to refresh his recollection.

Mr. Mason: I think he has the agreements here. The Witness: I have the agreement.

Mr. Naus: If other counsel have no objection, why not have him refresh his recollection from that? I might say in explanation, your Honor, these schedules, when printed and published, were widely distributed over the railroad, and hence were something known in the service, and there was no reason why anybody [62] should not have known of them. So that is the reason I think we are all agreeing. It is something that was widely known at the time.

A. December 1, 1918 is correct.

Mr. Mason: Q. That is the earliest working agreement for firemen that you can find which contained this rule permitting engineers to displace as firemen when cut off from the engineers' working list? A. Yes, sir:

- Q. What was the date, December 1, 1918, is that correct? A. Yes, that is correct.
- Q. Do you know and, if you know, will you state, from what rule this demotion and displacement rule originated?
- A. Yes, it originated from what was known as the Chicago Joint Working Agreement, which was a working agreement in existence between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen.
- Q. When was the Chicago Joint Working Agreement first entered into?
- * A. I have a copy of it here. It bears the date of May 17, 1913.

Mr. Naus: Can't we agree on that, gentlemen?

The Court: If you don't say something the Reporter won't get it.

Mr. Richberg: I would like to say explicitly we agree to that.

Mr. Mason: I do not think we have to. It has already been recited.

Mr. Naus: Since we have agreed on May 17, 1913, can't we further agree when it was terminated?

Mr. Mason: I was going to ask that question.

- Q. I understand the Chicago Joint Working Agreement was later abrogated. Do you know when that took place? [63]
- A. The nearest I could tell you, give you an answer to that question, is the year.
 - Q. What was that year? A. 1927.
- Q. I want to call your attention to this, Mr. Buckley, that the excerpt which I read to you from Article XXXII, Section 6(a) of the Engineers' Working Agreement, and which is also the first paragraph of Article XLIII of the Firemen's Agreement, ends with the words "Under the following conditions." Then there follows a series of paragraphs setting forth those conditions, does there not?
 - A. That is correct.
- Q. It is also correct, is it not, that those conditions all relate to earnings, limitations, and regulation of engineers substantially as quoted in paragraph 8 of the complaint?
 - A. You are speaking of the-
- Q. Of the remainder of the rule following the word "conditions"?

Mr. Naus: Now, Mr. Mason, I am perfectly willing to have the utmost liberality in the presentation. of evidence, but I would much prefer, getting into that, as to what is or is not a condition—

Mr. Mason: I am not into the Joint Working Agreement now.

Mr. Naus: No, but as to the other.

Mr. Mason: I am developing from that.

Mr. Naus: I think, if the Court please-

Mr. Mason: I think perhaps I should withdraw the question, because, after all, the agreements are in evidence and they speak for themselves.

Mr. Naus: All I had in mind was I would not want the witness to take the place of the judge.

Mr. Mason: No, I was only starting to refresh his mind.

- Q. Mr. Buckley, if the rule in the Firemen's Agreement or in the Engineers' Agreement, Article XXXII, Section 6(a), were to [64] end with the word "conditions" and there were nothing following that, would you, as a Local Chairman; undertaking to regulate the mileage of engineers, or as a Local Chairman undertaking to determine when men might displace as firemen, be able to make any effective regulation?
- A. I do not understand that I could, because there would be no conditions to act as a guide.
- Q. Will you say whether or not the conditions which follow are an essential part of the rule?

Mr. Naus: That question, if the Court please, is asking the witness to take the place on the bench that you are occupying. There it is in writing.

Mr. Mason: I am only asking him from his standpoint as the Local Chairman of both organizations, one and then the other organization, who have actually undertaken to perform the jobs, and from that standpoint—

The Witness: You are asking-

Mr. Naus: One moment. Have you finished the question?

Mr. Mason: I intended to reframe it.

Q. From your standpoint as a local chairman, charged with the job of undertaking regulations, could you operate unless the conditions were included?

Mr. Naus: If the Court please, I object to that as asking the witness to substitute for the Court. We have the rules, Article XLIII, the various sections in the complaint admitted by the answer. We have the schedules here. It is for the Court to determine from a reading of that rule, the writing, what it means, and not for the witness to start indulging in hypothesis as to what he might do.

The Court: It would be merely his opinion.

Mr. Naus: Yes.

The Court: 1 will sustained the objection. [65]

Mr. Mason: Q. Referring to these earnings limitations of Article XXXII, Section 6 of the Engineers' Agreement, and Article XLIII of the Firemen's Agreement, Mr. Buckley, where does the interest of the engineers craft as a group lie, in keeping the cut-off point relatively high, from the standpoint of average earnings, or keeping the cut-off point comparatively low!

A. The engineers would like to keep it comparatively high.

- Q. Why is that?
- A. Because it would result in a greater earning capacity for the membership of the Engineers, or for the craft of engineers, I should say.
- Q. What effect, if any, would it have on the members of the Engineers' Organization who were thus cut off?
 - A. They would be in the ranks with the Firemen.
- Q. And in what position in the ranks of the Firemen?
- A. They would be the senior men employed on that Division at that time as firemen.
- Q. And as senior firemen, would they have the choice of runs available to firemen?
 - A. Yes.
- Q. From the same standpoint, that of average, earnings for the men on the Engineers' Working List, where does the interest of the fireman lie, in having the cut-off point high or in having it low?
- A. No, the interest of the fireman would be in having the cut-off point of engineers low.
 - Q. Why is that?
- A. Because that would have the result of not being called upon to absorb engineers who otherwise would be cut off if the cut-off point was higher.
- Q. And if engineers are cut off and absorbed by the firemen, what effect does that have on the firemen's craft, generally?
 - A. Well, it will have the effect of taking out of

(Testimony of Cornelius M. Buckley.)
employment the firemen that are on the bottom of
the working list, because you can absorb but so
many. [66]

The Court: Q. Are there instances of firemen who are on the top of the list who are not qualified as engineers? Are there instances of that, or is it invariable that the top of the firemen's list is composed of eligible engineers?

- A. On most Divisions, your Honor, the firemen on the top of the firemen's list are eligible as engineers.
 - Q. But not always?
- A. Not always. I think one of the exhibits that was presented here this morning will show that only in two seniority districts do we have firemen that are not eligible as engineers.
- Q. In that instance, men who are qualified but are not along in service step over the heads of their seniors and do the engineering work?
 - A. No, no:
- Q. Suppose the top three men, for instance, of the Firemen's List did not know how to run an engine. They were just firemen. Then following those two or three are men who are able to do it, and there is need for an engineer. Do you take a man from the lower bracket and put him above those other men?
- A. Well, in order to intelligently answer that question, your Honor, I must explain first that firemen are examined for promotion to positions as

engineers in the order of their seniority. Now, if the men at the top of the Firemen's Seniority List are unable to pass the examination; men their junior are called up and examined, and if they pass, they are qualified, in which event the men who stood behind the senior men on top of the list, in the event they needed an engineer, would be run around the men at the top.

- Q. In other words, they do that which I am suggesting: There is a chance for a fireman under those circumstances to become an engineer over-the heads of those who are not qualified?
- A. Yes. Now, then, the Firemen's Agreement permits the men who fail first [67] in their examination to take the examination again in six months, but if in the intervening time the junior man is used out of turn, he establishes a date as an engineer, and thereby acquires—
 - Q. Ah, yes.
- A. (Continuing) —a date ahead of the men who failed to pass.
- Q. Once having served, he always has the rank on the others?
 Λ. That is correct.
- Mr. Mason: Q. You have explained, Mr. Buckley, that the Engineers' as an organization, as well as a craft or class, have an interest in keeping the cut-off point relatively high, is that correct?
 - A. Yes.
- Q. And Firemen, as a craft or class, as well as firemen as an organization, have an interest in keep-

(Testimony of Cornelius M. Buckley.)
ing the cut-off point for engineers relatively low?

- A. Yes.
- Q. If the engineers are to revert immediately to firing service? A. Yes.
- Q. Now, suppose that the Engineers' Organization, representing the craft or class, were to enterinto an agreement placing the cut-off point at, say, the equivalent of 3000 miles, and the firemen's craft or class, that is, the Firemen's Organization, representing the firemen's craft or class, were to enter into an agreement which said engineers could not displace senior firemen immediately upon being cut off unless they were cut off at an average of 2600 miles. Would that have any effect in producing a gap between the two crafts, or between the employees in the two crafts?
- A. Well, it would have the effect, if the engineer exercised the right under the rule to cut a man off whose average earnings equivalent was 2000 miles from going back into firing service, if the firemen had a rule, and exercised their right under that rule, to keep that man from going back firing because of being [68] cut off at an average mileage earnings which is higher/than their rule permits. What I am trying to say is this: There would be a difference of 400 miles between the two contracts. While the engineers would have the right to deny the service of the firemen as long as

the average mileage equivalent was above 2600. The man, finding himself cut off, would not have any place to go if he was cut off at 3000 miles.

Q. If the cut off point is identical in both agreements, what happens then?

A. There would not be any gap between the two services.

- Q. And the man who is cut off immediately finds employment by displacement as a fireman?
 - A. He would immediately exercise that right.
- Q. Mr. Buckley, I want to eall your attention to Article XXXII, Section 22, of the Engineers' Agreement, Exhibit 1, and also to Article LI, Section 1, of the Firemen's Agreement, Exhibit 2. Is there any other portion of the Engineers' Agreement, Exhibit 1, which relates to individual representation?
- A. No, it is found here in Article XXXII, Section 22.
- ^o Q. Will you look at Article XXXII, Section 21 (a)?
- A. Yes, that is captioned "Investigations," and deals with the right of an engineer who is under charges to be represented at an investigation.
- Q. It also deals with the matter of appeals from the results, does it not?
 - A. Yes, that is correct.
- Q. In your experience as a Local Chairman, have you seen individual representation of engineers in those circumstances? A. Have I——

- Q. Have you any recollection of individual representation of engineers under this Article XXXII, Section 21(a)?
- A. That is, [69] you mean an engineer representing himself without my assistance as Local Chairman?

Mr. Naus: It seems to me the question is has he ever seen Section 21(a) applied in practice.

Mr. Mason: Q. Yes, have you ever seen Section 21(a) applied in practice by the selection by an engineer under charges of another engineer as his representative? A. Oh, yes.

- Q. Apart from the Local Chairman?
- A. Yes, sir, ves, sir.
- Q. Or individual representation of the man by himself? A. Yes.
 - Q. And in the prosecution of his appeal?
- A. Well, let's see now. The prosecution of his appeal—I have in mind the individual who has handled his own case independent of either one of these organizations.
- Q. Have you in mind any individual who has had his case handled by another individual, other than the Local Chairman of the B. of L. E.—for instance, the Local Chairman of the B. of L. F. & E.?
 - A. Oh, yes, many of those cases, many of them.
- Q. Have you made any study to determine the origin of Article LI, Section 1, of the Firemen's Agreement?

- A. That also came out of the Chicago Joint Working Agreement.
- Q. Does a similar provision appear in the Chicago Joint Working Agreement? A. Yes.
- Q. When did the provision first appear in the Firemen's Agreement on the Southern Pacific?
- A. December 1, 1918, appearing at that time as Section 52.
- Q. Do you know if the same provision in substantially the same language has appeared in each reprint, each re-issue of the Firemen's Agreement since that time?

 A. Yes, sir.
- Q. Referring to pages 118, 119, and 120 of the Firemen's Agreement, Exhibit No. 2, you will note in black type the portion com- [70] mencing with the words "Addendum to Article XLIII; Application of mileage regulations to part-time men."
- ... A. Yes.
- Q. Which is also quoted, I think, in full in the complaint as being one of the alleged infringements on the Engineers. Do you know where this particular provision of the Firemen's Agreement originated?
- A. Well, it is shown there, Mr. Mason. It is and excerpt from the letter—

Mr. Naus: Mr. Mason, that schedule is in evidence as Exhibit 2. Isn't the introductory matter on page 118 self-explanatory?

Mr. Mason: I think it is, yes.

Mr. Naus: It is probably clearer than the witness could put it, isn't it?

Mr. Mason: I am willing to stipulate that the explanatory matter on pages 118 and 119 is correct, and shows the material was accepted as an agreement between the plaintiff, then represented by Mr. Laughlin, and the intervener, then represented by Mr. McLaughlin, with which the carrier concurred.

Mr. Naus: I could not accept the stipulation in that form, but I am perfectly willing to stipulate that the matter as stated in Exhibit 2 on page 118 and the top of page 119 is true, and it is stated there an agreement was entered into as disposing of a particular numbered case before a particular board. Beyond that the stipulation need not go.

Mr. Mason: You will stipulate, then, an agreement was entered into between the two organizations?

Mr. Naus: I will stipulate that beginning on page, 118 the paragraph that commences under the words "Addendum to Article XLIII" is true.

Mr. Mason: What I am particularly anxious to have stipulated and accepted as true are these words: "Accepted by Mr. G. W. [71] Laughlin, First Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers, and Mr. C. V. McLaughlin, Vice-President, Brotherhood of Locomotive Firemen and Enginemen, and concurred in by the carrier, as disposing of Case No. 11 that was pending before that board."

Mr. Naus: Mr. Mason, my stipulation embraces not only those words, but all the words in that paragraph.

Mr. Mason: Yes. Will you also stipulate with me that Mr. Laughlin duly appeared as representing the Brotherhood of Locomotive Engineers before that Emergency Board in 1937, and Mr. McLaughlin duly appeared as representing the Brotherhood of Locomotive Firemen and Enginemen?

Mr. Naus: So far as stipulations are concerned, I do not see that I need go any further. Whether there was ever any Emergency Board is not of importance. They are not a tribunal. They do not adjudicate anything. I will stipulate that that opening paragraph is true. You might proceed with the proof if you want more than that.

Mr. Mason: What I wanted you to stipulate to was
Mr. Laughlin had authority to represent——

Mr. Naus: I will stipulate that Mr. G. W. Laughlin had the power to represent for limited purposes. I doubt very much, as a lawyer, whether he had any power whatever to make any working contract. That is a matter for the General Committee. But for the purposes of this litigation, and nothing further, I will stipulate that he had power to make the agreement set forth in the Firemen's Schedule, as recited in the Firemen's Schedule, and for the purpose recited.

Mr. Mason: That disposes of a great deal.

Mr. Naus: I think it does, [72]

The Court: Well, is it stipulated to?

Mr. Mason: I accepted-

The Court: I do not hear any response. I see nodding heads, and so forth, but that does not go into the record. Someone will say, "I never agreed to that; show it to me in the record."

Mr. Mason: I accept the stipulation as recited by Mr. Naus.

Mr. Richberg: That is acceptable also to the Intervener.

Mr. Mason: Q. Going to Article XXXVII of the Firemen's Agreement, Mr. Buckley, and turning to Section 15 on page 89 of Exhibit 2, the Firemen's Agreement, first calling your attention to the portion of Section 15 which is not in heavy print, will you explain to the Court what happens when a fireman who has a regular assignment is taken from that assignment to serve as an engineer?

A. Yes. If he is taken off of his assignment and placed on the Engineers' List by joint action of the Local Chairman of the Engineers and the Carrier representative, this section does not apply to him. But if a fireman assigned to a regular run is taken off that run at the instance of the company, to be used in service as an engineer, the company is required to pay him not less than he would have earned in his turn as a fireman had he not been sent out on that run.

Q. In a practical sense, to what type of calling of engineer does that apply?

- A. Well, we refer to them as emergency engineer, or—I do not know if that meets your question.
- Q. Is it the call of a man who is on the Engineer's Working List or a man who is merely eligible to serve as an engineer?
 - A. A man eligible for service.
 - Q. But he is not on the working list?
 - A. Not on the working list.
- Q: Is there any way that the company could avoid paying that [73] guaranteed wage to that fireman called as an emergency engineer?
 - A. No, there is not.
- Q. What provision, if any, is there which prevents the company from avoiding that guarantee payment or avoiding that payment at all?
- A. Well, this question and answer that appear there immediately underneath Section 15 in heavy type may operate in that manner.
- Q. If it were not for the provision in heavy type, the questions and answers in heavy type, could the company slide by the senior available man and call some other demoted engineer serving as a fireman in an emergency?
- A. Yes, they could then, but the question and answer appearing in heavy type prevents us from doing that.
 - Q. What does that provision do then?
- A. This provision here requires us to call the senior demoted engineer.

- Q. Even though he may be assigned to a run as a fireman?
- A. Even though he may be assigned to a run as a fireman, and due to leave the city that evening. We are required to use him if he is the senior available qualified demoted engineer, and regardless of the fact that other qualified demoted engineers may be available in the terminal, we will say, on their lay-over day.
- Q. You mean although there are qualified demoted engineers serving as firemen standing by idle; they can't be called?
 - A. No, that is, if available.
- Q. If the company could call the man standing by who was junior to the senior available man, could they by that means avoid payment of that guaranteed assignment?
- A. Yes, it is possible that they could. Now, I can think of an instance something like this: Firemen 1 and 2, we will say, are firing passenger runs. No. I is due to leave the city this evening at four o'clock. No. [74] 2 is due to leave the city tomorrow evening at four o'clock. We have need of an engineer to operate a yard engine at four o'clock this afternoon. Now, if it were not for this rule, we could use No. 2 as a yard engineer this afternoon and send him out as a fireman on his run tomorrow, and incur no penalty. But because of this rule we are required to take the senior of those two men, use him as an emergency engineer this afternoon,

(Testimony of Cornelius M. Buckley.) and pay him the difference between what he earned on the yard engine and what he lost on his run as a fireman because we used him as an engineer.

- Q. Have you in your experience as local chairman seen the rule operate in that fashion?
 - A. Oh, yes, yes.
- Q. Does it afford any protection to the members of the firemen's craft?
 - A. Well, it preserves the integrity of Section 15 of their Article XXXVII, and it also preserves the integrity of their seniority rule, which advances men of the higher grade of service in accordance with their service as engineers.
- Q. Mr. Buckley, are there in the service of the company any engineers who did not pass through the grade of firemen who became engineers directly as they were employed first as engineers?
 - A. Well, we have men on the Engineers' Seniority List who were not promoted from the ranks of the firemen on these properties.
 - Q. What are they called colloquially?
 - A. They are called hired engineers.
 - Q. Do those hired engineers now have seniority dates as firemen? A. Yes.
 - Q. How did they acquire those seniority dates!
 - A. That was also the result of the Chicago Joint Working Agreement between the two organizations.
 - Q. What is their seniority date as firemen?
 - A. It is equivalent of their seniority date as engineers, [75]

- Q. The same date? A. The same date.
- Q. Prior to the time that these men acquired seniority dates as firemen through the workings of that agreement, did hired engineers on this Company's lines have seniority as firemen?
 - A. No, sir.
- Q. Suppose they were cut off because of lack of business. What do they do?
 - A. Well, they were just out of employment.
 - Q. They were furloughed, were they?
 - A. They were furloughed.

Mr. Mason: That is all, thank you. Cross-examine.

Cross Examination

Mr. Naus: Q. I have very few questions. Mr. Buckley, I do not know that it is entirely in the scope of your direct examination, but approximately when was the Engineers' Schedule, Exhibit 1, distributed after printing? When was it published on the railroad?

- A. Well, approximately thirty days.
- Q. After what date, thirty days after what date?
- A. After the date of signature.
- Q. State the date. A. January 9, 1931.
- Q. Take Exhibit 2, the Firemen's schedule, the one in evidence here. Approximately when was that published and distributed on the railroad?
 - A. Approximately—
 - Q. Within thirty days after what date?
 - A. Thirty days after June 1, 1939.

- Q. Now, reference was made in your answers to your Exhibit No. 6, your locomotive mileage, your volume of locomotive mileage. The statement here, . Exhibit No. 6 is headed "Statement showing number of locomotive miles accumulated on Southern Pacific Lines (Including former E. P. & S. W.);" before acquisition by the Southern Pacific there was a separate railroad known as the E. P. & S. W., or El Paso & Southwestern; wasn't there?
 - A. That is correct.
- Q. And then at some time the Southern Pacific acquired it and it [76] became an integral part of the Southern Pacific System, Pacific Lines?
 - A. That is correct.
- Q. The Firemen's and Engineers' Schedules that are in evidence here do not embrace the men who were formerly on the E. P. & S. W., do they?
 - A. No. sir, they do not.
- Q. In making up your Exhibit 6 of locomotive mileage, you have included the locomotive mileage on the former E. P. & S. W. Is that merely for convenience or because of the difficulty in breaking it down?
- A. Difficulty in breaking down the exhibit.

Mr. Mason: Mr. Naus, I might add this-

Mr. Naus: I am not seeking to attack anything.

Mr. Mason: Just for the guidance of the Court, the former El Paso & Southwestern Line, now part of our Pacific Lines, included the line between Tucson via Douglas and El Paso, the so-called south

line in Southeastern Arizona and Southwestern New Mexico, and the line from El Paso to Tucumcari and Dawson in New Mexico, and I think a small branch from Clifton to Lordsburg, in New Mexico. But in any event, if you were to strike out these figures in column "K", the Rio Grande Division, you would practically strike out the El Paso & Southwestern plus 148 miles of the Pacific Lines proper, on which the Engineers' and Firemen's Schedules in evidence operate.

Mr. Naus: Mr. Mason and Mr. Buckley both, it is understood, then, Exhibit 6 cannot possibly accurately show the locomotive mileage, but it is fairly accurate and clearly illustrative of the up and down of railroad traffic in proportion, is that correct?

Mr. Mason: Yes, that certainly is correct.

The Witness: Correct.

Mr. Mason: The exhibit was prepared, as you will recall, Mr. Naus, for the purpose of showing fluctuations, although it could [77] not, because our statistics are not so kept, confine the showing to the line excluding the former El Paso & Southwestern.

Mr. Naus: I understand that. It was explained to me before the case started. I merely wanted to clear that up, because our pleadings are directed to the Pacific Lines, excluding the E. P. & S. W.

Q. Now, Mr. Buckley, we have some figures in one of your other exhibits as to the number of engineers on the seniority list and on the working list from time to time. Just to get another rough com-

parison, approximately how many engineers and firemen are there on the lists on the former E. P. & S. W. portion of the Pacific Lines?

A. I really couldn't tell you, because I have never looked that up.

Q. Well, to put it a little differently, on the portion of the Pacific Lines known as the former E. P. & S. W., the craft or class of engineers on that portion is represented by the Brotherhood of Locomotive Engineers, and the craft or class of firemen on that portion is represented by the Brotherhood of Locomotive Firemen and Enginemen, is that correct?

A. That is correct.

Q. Just as it is on the remaining Pacific Lines!

-A. Yes, sir.

Q. With respect to that Chicago Joint Agreement, I presume that you are prepared to accept our statement that the termination date was ninety days from August 1, 1927?

A. Yes. I knew it was in 1927, but I didn't know the date or month.

Mr. Naus: Are we agreed on that, gentlemen!

Mr. Richberg: That is agreed to.

Mr. Naus: Q. In speaking of the practice of engineers being cut off the Engineers' Working List and being put back on firing, does the Local Chairman of the Engineers have to do not only with cutting them off the Engineers' List, but putting them back [78] on, or putting more men back on the Engineers' list?

A. Yes, sir.

- Q. You spoke of Section 1, Article LI, of the Firemen's Agreement, having come from the Chicago Joint Working Agreement, and I understood you further to say that it appeared in each reprint, that is to say, each publication of the Firemen's Schedule since then?
 - A. Substantially the same.
- Q. But it has not always been without protest from the engineers, has it?
- A. I understand the Engineers protested it, resulting in this case coming into court.
- Q. All I had in mind, Mr. Buckley, was I am sure you didn't want to be misunderstood when you testified on direct examination that that Section 1 of Article LI and now in the present Firemen's Schedule, has appeared in successive reprints since the Chicago Joint Working Agreement, you didn't want the Court to understand it appeared in successive issues of the Firemen's Schedule without protest from the Engineers? You did not want the Court to so understand?
- A. They protested its inclusion in the last issue of the Firemen's Agreement.
 - Q. . They protested on its appearance in there?
 - A. Yes.
 - Q. Then they sought before that publication to have it deleted?
 - A. You mean before the Firemen's Agreement

Q. Before this last publication of 1931 appeared and was distributed on the Railroad?

A. Yes, they did.

Mr. Naus: That is all, if the Court please..

Mr. Richberg: If it please the Court, I have only a few questions to ask the witness. I will not extend this examination.

Cross Examination

By Mr. Richberg:

Q. Mr. Buckley, on the basis of your experience, as an officer of both the Firemen's and Engineers' organizations, and your subsequent [79] experience as an officer or official of the railroad, may I ask whether in your opinion these mileage regulations which are incorporated in the Firemen's contract, and which is a subject of complaint in the bill of complaint, whether in your opinion those are matters of exclusive interest to one of the organizations or of joint interest to both?

Mr. Naus:—If the Court please, I object to that as calling for an opinion. That is one of the very things to be determined by your Honor.

Mr. Richberg: May I point out in this case, if the Court please, it is a question as to whether this is a field of joint interest, but as to that expert testimony certainly is receivable, and I fail to see how you could get a more expert witness than a man who had been representative of both organizations, and now representing the Railroad. I asked

the witness whether in his opinion this was a field of exclusive interest to one organization or a matter of joint interest to both. It is a question whether they have an interest in these mileage regulations.

The Court: I will allow the question.

A. It is a question of joint interest, in my opinion.

Mr. Richberg: Q. Speaking now in your capacity as an official of the railroad, would it in your judgment be practical or impractical to have in the engineers' contract rules governing the mileage of an engineer, or increase or reduction of numbers different from the similar rules in the Firemen's Contract governing the demotion of engineers to firemen? In your opinion would it be practical or impractical to have those rules different in the two contracts?

A. They are different now.

The Court: He is not asking you that; he is just asking you a hypothetical question. [80]

Mr. Richberg: Q. As to whether these rules could be different rules and be practically applied, or whether it would be more practical to have the same, rules?

A. It would be more practical to have the rules be same.

When you said they are different now, what did you mean, Mr. Buckley?

A. I mean there is a slight difference in the mileage rules as they apply in the Firemen's Agree-

(Testimony of Cornelius M. Buckley.)
ment and the corresponding rule in the Engineers'
Agreement.

- Q. Is that a difference in the rule, itself, or in the construction which is placed on the rule by the different organizations?
- A. It is a difference in the wording of the two rules.
 - Q. That is in one rule, is it? A. Yes.
 - Q. Will you state that particular rule?
 - A. I could identify that.
- Q. Would you identify the rule you are speaking of?
- A. Now, when you compare Article XXXII, Section 6(a) of the Engineer's Agreement with Article XLIII, Section 1, of the Firemen's Agreement, you will find the Firemen's Agreement contains language that the Engineers' Agreement does not.
- Q. Can the Firemen's Agreement be applied consistently with the application of the Engineers. Agreement, or are you required to make a choice between applying one or the other in the case of a difference?
- A. The Engineers' Agreement can be applied in reducing engineers from the working lists. When we come to place those men reduced from the Engineers' Working List, into the ranks of the firement, then the Firemen's Agreement must apply, because they have control of that craft from then on.
- Q. In other words, you there have a situation where you can apply the Engineers' rule to the

(Testimony of Cornelius M. Buckley.)
amount of mileage an engineer will run, but if the
engineer is going to be demoted to fireman, you will
have to apply the Firemen's rule to see that he is
properly demoted, [81] is that correct?

- A. Yes.
- Q. If you had that condition applying to all these mileage regulations instead of this small part, would that be a desirable or an undesirable condition compared to the situation where the rules are identical?
 - A. I don't know as I understand your question.
- Q. I say, outside of this where the rules agree at the present time then you have none of this difficulty of applying one principle to reduction of forces of engineers and another to demotion to firemen, but in this particular instance you have to apply two different rules?

 A. Yes.
- Q. I say, do your difficulties increase with the two rules generally affecting the entire mileage regulations?
- A. The difficulties would increase if the two rules disagreed as they went on. Just a minute. Now, let me see if I quite get that question.

Mr. Richberg: Your Honor, I do not want to lead the witness.

Q. In other words, Mr. Buckley, if you had to apply one rule to the regulation of the Engineers' Schedule and then had to apply an entirely different rule as to what men would be eligible under the

(Testimony of Cornelius M. Buckley.)
demotion rule to serve as firemen, you would have
a gap between the two rules, would you not?

A. Yes.

Q. And the result would be an increasing number of engineers would be out of service as engineers and yet not eligible to become firemen?

A. That would be quite possible.

Q. You have been a member of both of these organizations, Mr. Buckley. If while a member of the Firemen's Organization you were compelled against your will to accept representation by the B. of L. E. in the matter of grievances, would that be a strong inducement on you to join that organization?

Mr. Naus: Your Honor it is not a matter of what this individual's feelings may be, how it would affect him under a given hypo-[82] thesis.

Mr. Richberg: Perhaps the conclusion can be drawn without asking the witness.

The Court: I will sustain the objection.

Mr. Richberg: I think that is all.

Mr. Naus: I would like to ask one or two questions appropos of counsel's questions.

Further Cross Examination

Mr. Naus: Q. Mr. Buckley, you have spoken about the possible difficulty you might encounter when you find a difference in wording of the two rules—for example, comparing XXXII-6(a) with XLIII-1 of the other—is it not the fact you

face that same fanciful difficulty if you find the rule in the Firemen's Schedule exactly the same in wording with that in the Engineers' Schedule but finding the respective general committees differing in their interpretation of the language?

- A. Well, that would be probable; yes.
- Q. Now, take a rule that reads identically in language in both schedules; that is to say, assume for the moment that XXXII-6(a) of the Engineers was the exact wording of XLIII-1 of the Firemen's, and the Firemen's General Chairman asserted one interpretation under given facts, and the Engineers' General Chairman asserted a different interpretation under those identical facts. Which interpretation would you follow?
- A. Well, that is a river I would have to cross when I met it. I couldn't tell you now.
- Q. In other words, Mr. Buckley, the mere identity in the wording of the rule in the two schedules would not relieve you of the practical difficulty you spoke of, would it?
 - A. It would assist greatly. [83]
- Q. You think there might be less difference between the two Chairmen's interpretations, I take it?
- A. Yes, because it would probably be much easier to harmonize their differences under circumstance of that kind than it is now.
- Q. Now, you spoke of a joint interest of engineers and firemen under given circumstances. It goes no further than this, does it, Mr. Buckley, that

(Testimony of Cornelius M. Buckley.)
under the Engineers' Schedule you concede that the
Engineers Brotherhood have a right to make rules
respecting engineers?

A. Yes, sir.

- Q. But if when engineers are cut off the working list, it is solely the right of the firemen to say under what circumstances they can go back firing, is that correct? A. Yes, sir.
- Q. To go a step further, if the Engineers serve notice on you, the Carrier, that they wish to negotiate a new section of the Engineers' Schedule removing the maximum mileage limitation on engineers, the Firemen would have no concern in that, would they?

 A. No, sir.
- Q. It would simply make more clear, would it not, the distinctness of these two crafts in this sense, that as business went down and engineers would go off the working list, they would have to wait until there was more business to run engines for before they could go back to work as engineers?
- A. Yes. But I do not know as you understood my reference to the joint interest.
 - Q. What is your idea of the joint interest?
- A. Let's turn it around and work it the other way. When we would raise the minimum allowances that would be permitted engineers—say we would raise that to 3000 or 3500 miles—naturally the firemen are going to be very much interested in that, because if they cut off engineers while they are earning 3500 miles per month and place them back in the ranks of the firemen, it becomes a matter of con-

(Testimony of Cornelius M. Buckley.) siderable concern to the firemen who will lose their positions [84] as a result thereof. That is where the joint interest comes in that I had in mind.

- Q. Assume a situation where there was nothing in either schedule giving the engineer cut off the right to go back firing. Assume the absence of that. That is to say, assume a situation where an engineer cut off the list has no right to go back firing under their schedule and must wait for more business to go back running an engine. Under such a situation, do you say there would be a joint interest in both crafts as to the number of miles an engineer could go?

 A. No, sir.
 - Q. Pardon me? A. No, sir.
- Q. So you go no further in your statement about a joint interest and you mean no more by your answer, do you, Mr. Buckley, than that such a joint interest, as you call it, might exist so long as there is a provision permitting an engineer to go back. firing?
- A. Yes, so long as there is a movement between the two groups or the two crafts based upon the mileage earnings of the upper craft, which has its effect upon the junior craft.
- Q. Now, as a matter of fact, isn't it a matter of self interest for the firemen to have a provision in there permitting engineers cut off to go back firing, because in the absence of that no senior fireman would ever want to give up his firing position and take a low engineer's job?

A. No, he would not.

Q. Pardon me? A. He would not want to.

Q. As a matter of fact, it is a matter of self-interest, not joint interest but self-interest, of the fireman for the men who have the highest seniority to have a rule permitting one to go back firing, otherwise they would never quit firing and start to run engine, isn't that correct?

A. That is correct—I assume it is.

Mr. Naus: That is all. [85]

Mr. Mason: No redirect examination.

The Court: Proceed, then.

Mr. Mason: That is all, Mr. Buckley.

That closes the case in chief for the Defendant.

Mr. Richberg: We have some material to present, if the Court please, in behalf of the Intervener, and before calling a witness I should like to offer two compilations which have been presented here-tofere to counsel for the plaintiff, and, I understand, are acceptable as to what they show One consists of a compilation of the rules in the Engineers' and Firemen's Agreements, covering the rights of promoted and hired engineers to take assignments as firemen before and after the Chicago Joint Working Agreement. You have copies of this, Mr. Naus?

Mr. Naus: Yes, your Honor, Counsel is entirely correct in stating that copies of that were given not only to the plaintiff but to the defendant Railroad

(Testimony of Cornelius M. Buckley.) substantially in advance of the hearing here. We find no inaccuracies in that, and I stated in advance I would make no objection; but in looking it over since, Mr. Richberg, I find on page 10, the sixth line from the top, the word "assurance". We can agree, can we not, the assurance spoken of there was an assurance given by the Railroad and not an assurance given by the Brotherhood of Locomotive Engineers?

Mr. Richberg: I think there is no question about that.

Mr. Naus: With that understanding I will make no objection to the offer.

The Court: No. 7.

Mr. Richberg: I would like to offer this Exhibit 7: (The document in question was thereupon received in evidence and marked, "Exhibit 7.")
[Set out at page 637 of this printed record.]

Mr. Richberg: The second document to which I refer is a [86] compilation consisting of extracts relative to the representation rule from the Engineers' and Firemen's Agreements on the Southern Pacific. This also has been furnished to counsel for both parties. I understand there is no question of the accuracy of that document.

Mr. Naus: That is one that we also had an opportunity to examine in advance and to which we make no objection.

Mr. Richberg: I offer this as Exhibit 8.
The Court: No. 8.

(The document in question was thereupon received in evidence and marked "Exhibit 8."). [Set out at page 660 of this printed record.]

Mr. Richberg: I think it would be appropriate also to offer as an exhibit, if the Court please, this report of the Emergency Board appointed April 14, 1937, to pass upon a similar proceeding and controversy on this railroad, involving the same organizations, although also two others. The reason for offering the exhibit particularly, if the Court please, is these reports are not available in the ordinary form by references to books, such as the opinions of the courts, and being the findings of. an emergency body, are not available, so far as I know, except in a few publications, in the form of Government Printing Office Reports. So in order to bring it forward properly to your Hohor's attention and preserve it as a matter of record, I think it would be appropriate to offer it as an exhibit.

Mr. Naus: If the Court please, in being offered as an exhibit in evidence here, I will say this: I make no objection that it is a copy. I concede that it is a true copy of an original document, a copy of the document that it purports to be. I make no objection based upon foundation. I do object, however, to the reception of it as an exhibit in this case upon the ground that [87] it is hearsay, it is opinion, it is conclusion, and it is res inter alios

acta, I might point out to your Honor it is a report of an Emergency Board, which is a body selected under Section 10 of the Railway Labor Act. It is a board that does not swear witnesses, does not follow the rules of evidence, and makes no adjudication whatsoever. It simply gives its version of the facts in a haphazard, hurried way to the President in a wave of public opinion, and adjudicates nothing in the sense of a court, and is binding on no one, and it is addressed chiefly to the strike ballot issued by the Firemen and a controversy primarily between them and the Carrier. But I repeat that I do not object on the ground that proper foundation has not been laid: I concede it is a true copy of what it purports to be, and if the original were here, or a certified copy were here, it would be identical. But I object on the ground it is hearsay, opinion, conclusion, and res inter alios acta.

The Court: In other words, it has no legal bearing on the issues here?

Mr. Naus: I do not think it has any legal bearing on the issues here. Besides that, it so happens neither the laymen nor the two more or less active lawyers who made up that body listened or heard the facts properly. They listened to the facts in a hotel room, or, rather, what I believe to be incorrect views that they formed, and entertained in a hurry at that time.

Mr. Mason: Your Honor, answering the other objections, I have not offered this, but I think the face of the report will show it was not a proceeding

between other people in so far as the purpose for which the document is offered is concerned. These two organizations, through their General Committees, and the same counsel except Mr. Naus who are present here were present at the [88] same time and participated in the proceedings.

The Court: It is not of any legal significance here. It may be received as Exhibit A, anyway.

Mr. Richberg: That would be Exhibit 9?

The Court: No. Exhibit A only for identification,

[Note: Exhibit A for identification is set on at page 726 of this printed record.]

Mr. Richberg: May I point out to the Court the situation as to these boards, because there is subsequently involved, also, the question of the Mediation Board. Mr. Naus' description of the Emergency Board bears no relation to a careful examination of the Act or the actions of the Emergency Board. I assume that arises simply by reason of his lack of acquaintance with it.

The Court: I see no objection, if you are going to write briefs on this, to state that that Boardconsidered that case. I understand it is not a legal tribunal to determine that point.

Mr. Richberg: This is the point I wanted to make, your Honor. As a matter of fact, this tribunal can summon witnesses—I think I am correct—and it is a part of the administrative machinery for the enforcement of the very Act which your Honor is asked to construe. The continuing body under that

machinery is the National Mediation Board, which is a continuing enforcing body and has official duties, and we expect to offer certain determinations of that Board which are relevant. We believe they are entitled to your Honor's consideration.

The next step in the proceedings, if the Mediation Board is unable to settle the controversy, is to have an Arbitration Board appointed, and the Arbitration Board under those cicumstances makes an award which is binding and enforceable in the Federal Courts. That certainly has legal standing. If one or both of the parties have declined arbitration and therefore the Act cannot have its purposes . consummated in that way, the Act then [89] provides that upon certification to the President that there is danger of a serious interruption of interstate commerce, he can create an Emergency Board for the purpose of collecting the facts and reporting to kim within the thirty-day period, during which there can be no change in the condition—in other words. any strike is prevented during that period. This Board exercises a very high function, and these Boards have been appointed with the greatest care. The members of this particular Board—all of them -had been appointed on previous boards appointed by the President, and were men thoroughly familiar with the conditions in the railroad industry. They had to, under the law, take evidence quickly, formulate their conclusions, and report them. But, as I pointed out to your, Honor, in the history of the

Railway Labor Act I think there has been no ease in which the recommendation of the Emergency Board did not provide a solution of that controversy. Therefore, the finding of that Board is far above the casual and scurrilous statement of counsel in an attempt to discredit their conclusions. If they are worthy of the consideration of the President of the United States, we certainly think they are worthy of consideration of any court where precisely the same controversy is sought to be determined.

Now, if it please your Honor, I want to call one witness—and I hope we can make the examination reasonably brief—as I stated, for the purpose of clarifying the operations under the Railway Labor Act of the Railroad so as to clarify the allegations in the pleadings and make an easier interpretation of the Act, itself.

Mr. Robertson.

If the Court please, before I put Mr. Robertson on the stand, I should have asked for a stipulation similar to that which was [90] obtained by counsel for the Plaintiff as to the following provisions in the second defense offered by the Intervener, page 4 of the Answer, which reads as follows:

"The Brotherhood of Locomotive Firemen and Enginemen is and was at all times herein mentioned an unincorporated voluntary association, and Intervener at all said times was and is new an unincorporated voluntary association organized under the authority of said Brotherhood."

Mr. Naus: I so stipulate. That is the companion situation to the Engineers.

Mr. Richberg: That is right.

Mr. Mason: The Defendant will join in that stipulation.

DAVID B. ROBERTSON,

called as a witness in behalf of the Intervener, being first duly sworn by the Clerk of the Court, testified as follows:

Direct Examination

Mr. Richberg: Q. Your name is David B. Robertson? A. Yes.

- Q. Mr. Robertson, what is your present position?
- At President of the Brotherhood of Locomotive Firemen and Enginemen.
 - Q. When were you elected to that position?
 - A. July 1, 1922.
- Q. When did you first engage in railroad employment? A. January 25, 1895.
- Q. When did you begin to fire a locomotive, and for how long did you serve as fireman?
- A. I started to fire a locomotive in November, 1898, and I served until June 19, 1902.
 - Q. Did you then begin service as an engineer?
 - A. Yes, sir.
- Q. What official positions have you held in the Brotherhood of Locomotive Firemen and Enginemen, and will you state during what period you served in each position?

- A. I was the President of the Local Lodge which I joined in 1899 for two years, and then I was the Local Chairman for two years. I [91] was then elected General Chairman in 1905 on the railroad where I was employed, the Eric Railroad, and served in that capacity until 1913, when I was elected Vice-President of the Brotherhood. I served from 1913 as Vice-President until July 1, 1932, when I was elected president.
- Q. And you served continuously as President since that time? A. Yes, sir.
- Q. As a result of your service as an officer of the Brotherhood, are you familiar with the contracts between the railroads throughout the country generally and your organization, and particularly with the development of contractual relations between your Brotherhood and the Southern Pacific Railroad Company? A. Yes.
- Q. What classifications of employees are members of your Brotherhood?
- A. Engineers, Firemen, Hostlers and Hostler Helpers.
- Mr. Richberg: By the way, statement was made carlier as to the total membership of the Engineers Organization, which was 62,000, was it not?

Mr. Naus: Sixty thousand plus.

Mr. Richberg: Q. What is the membership of the Brotherhood of Locomotive Firemen and Enginemen at the present time?

A. The first days of this month it was 84,819.

- Q. Approximately how many engineers, that is, men with seniority dates as engineers, are members of your Brotherhood throughout the country?
 - A. Between nineteen and twenty thousand.
- Q. In the course of your official duties is it necessary for you to familiarize yourself with the contracts also that the Brotherhood of Locomotive Engineers has with the various railroads, and particularly with the Southern Pacific?
 - A. Yes, sir.
- Q. How many members of your Brotherhood are employed in engine service by the Southern Pacific? By that I mean in all branches [92] of the service.
 - A., Including Hostlers?
 - Q. Yes.
- A. Between twenty-three and twenty-four hundred
- Q. That is, firemen, enginemen, hostlers, and hostler helpers?
- A. Yes, sir. This month it will show about twenty-five
- Q. How many of your members are classified as engineers out of that group?
 - Al About mine hundred. .
- Q. So about nine hundred out of twenty-four hundred are engineers? A. Yes, sir.
- Q. Are some of your members also members of the Brotherhood of Locomotive Engineers?
 - A. Yes, sir.

- Q. You have here and throughout the country what are called double headers?
 - A. Yes, sir.
- Q. Men who maintain membership in both organizations? A. Yes, sir.
- Q. In the early days of your organization was there any duplication of membership between the two organizations?

 A. No, sir.
- Q. Will you explain briefly how the present duplication developed?
- A. Well, it came about by reason of the fact that after the Firemen's Organization had been in existence for a few years, they created insurance departments for the purpose of furnishing insurance to the men in service, and when the men who were members of the Firemen's had reached the point where they were to be called for promotion to the position of engineer, they had their insurance in our department, and as a result of that, at a low rate, they were influenced to remain with us because they were older, and if they took insurance in the B. of L. E., it would cost them more. That was generally the reason why.

The further fact might be added that when a man is first promoted, he spends considerable time in working as an extra engineer—in other words, he may work a few months as an engineer, go back as a fireman, and during all that period he hasn't much [93] desire to change his status as a locomo-

(Testimony of David B. Robertson.)
tive fireman and then again, if he did change, it
would affect his insurance.

- Q. So there are many reasons why firemen should retain membership in your organization even after they have been promoted to be engineer?
 - A. A great many of them do.
- Q. Some of them sometimes join the Engineers.

 Organization and retain both?

 A. Yes.
- Q. Will you state when the first provisions for demotion of engineers were written into your agreement between your Brotherhood and the Southern Pacific?
- A. The Agreement is dated April 1, 1907 and the provisions are effective on March 18, 1908.
- Q. In the compilation which has been presented here as Exhibit 7,—you have seen that compilation, haven't you, Mr. Robertson? A. Yes, sir.
- Q. May I summarize it briefly by saying—Is it the fact that it shows from 1907 down to 1927 the provisions for the demotion of engineers and the terms on which they should be demoted were written exclusively in the Firemen's Agreement?
- A. That is what it shows, yes.
- Q. There is no such provision in any of the Engineers' Agreements during that entire period, is there?

 A. No, sir.
- Q: Prior to this first provision in 1907 for the demoting of Engineers was there any uniform or established practice on the railroads generally or

(Testimony of David B. Robertson.)
on the Southern Pacific in regard to men returning
to firing service?

A. No. sir.

- Q. That was done in some instances, was it not?
- A. Yes, sir.
- Q. But under different rules?
- A. Yes, every railroad made its own rules.
- Q. There has been some testimony heretofore about the Chicago Joint Agreement. I think I am correct in saying that was an agree- [94] ment between the Firemen and the Brotherhood of Locomotive Engineers governing matters of joint interest to them in the railroad schedules; am I correct?
 - A. Yes.
- Q. That agreement as heretofore referred to is dated May 17, 1913. Am I correct in understanding it went into effect on July 1st of the same year?
 - A. That is right.
- Q. Will you state in brief form the substance of those provisions?

Mr. Richberg: If the Court please, the entire Agreement has not been introduced here; only sections have. I thought it would be helpful to state the general substance.

Mr. Naus: If the Court please, I have no objection to its being a copy of the Chicago Joint Agreement, and I have no objection to that document going in. I do object to the witness giving his version of it, substance of it.

Mr. Richberg: I do not want to press it.

Mr. Naus: If you have any particular provision, I will make no objection to your reading it.

Mr. Richberg: I think perhaps the shortest thing to do would be to introduce the copy of the Agreement itself.

Mr. Naus: Yes.

Mr. Richberg: Q. Have you a copy of the Agreement which I can use?

A. This is the original. This is the First Amendment and this is the Second Amendment. (Indicating.) That is the last one that went into effect.

Mr. Richberg: I have here three documents, if the Court please. One is the Chicago Joint Agreement, May 17, 1913; the other is dated May 17, 1913, but as revised at Cleveland May 4, 1918, and the third is as revised at Cleveland May 4, 1918 and May 1, 1923. I understand these three represent the Chicago Joint Agreement during the period in which it was in effect between the [95] two organizations. I will ask, if the Court please, that the first-in time be marked—am I correct—Exhibit A?

Mr. Naus: I might say, if the Court please, that I accept each of those documents as authentic. While there are three documents physically being offered, it is the same agreement all the way through. There was the original agreement in 1913, and then there was an amendment or revision in 1918, and a later amendment or revision in 1923. This shows the three forms of it, and that is the one that the stipulation

a while ago showed a termination of ninety days after August 1, 1927.

The Court: 9-a, b, and c in chronological order.

(The documents in question were thereupon received in evidence and marked Exhibits 9a, 9b, and 9c, respectively.) [Set out at pages 669, 684 and 701 of this printed record.]

Mr. Richberg: You have no objection to this?
Mr. Mason: No. I have no objection.

Mr. Richberg: Q. Following the adoption of this agreement, Mr. Robertson, were the provisions of that agreement written into various contracts between the Brotherhood of Locomotive Firemen and Enginemen and the Railroads throughout the country, and particularly written into the contract made between your organization and the Southern Pacific Railroad?

Mr. Naus: Mr. Richberg, you do not mean all the provisions of the Joint Agreement; some of them?

Mr. Richberg: No, some of them.

The Witness: Yes, sir.

offered showing the development of these rules incorporate in them quotations from the Chicago Joint Agreement written into the Southern Pacific Agreements, which to your knowledge are correct, are they not?

A. Yes, sir. [96]

Q. Is it also a fact that some of the provisions of the Chicago Joint Agreement were written into the contracts between the Brotherhood of Locomotive Engineers and the Southern Pacific?

- A. Yes, sir.
- Q. : Not all the same ones that were written into your contract, however?
 - A. Not all of them.
- Q. It has been heretofore testified that that Agreement was abrogated in 1927.

Mr. Naus: Ninety days after August 1, 1927.

Mr. Richberg: Q. Ninety days after August 1st, is that correct?

- A. It was abrogated effective in October 1927.
- Q: That was an action by the Brotherhood of Locomotive Engineers?

 A. Yes, sir.
- Q. Following the abrogation of the Chicago Joint Agreement what changes were made in the Engineers' Contract with relation to the demotion of engineers and the railroad mileage provisions?
- A. There were very few changes made with regard to the demotion of engineers on any of the railroads except that here and there steps were taken by the B. L. E. to modify the Agreement so as to change the conditions under which the men would, be demoted by raising the mileage.
- Q. That was not done on the Southern Pacific Railroad, was it, as to changing the mileage?
- A. No. sir.
- Q. Were there disputes which developed between the Brotherhoods and the various railroads as the result of the abrogation of the Chicago Joint Agreement? A. Yes, sir.

- Q. Did one of those disputes develop on the Southern Pacific? A. Yes, sir.
- Q: Was that the cause of the strike vote which was taken in 1937?

 A. Yes, sir. [97]
- Q. As a part of that strike vote was involved a controversy between your organization and the railroad as to agreements they made with the Locomotive Engineers?

 A. Yes, sir.
- Q. It was that controversy that then finally went to the Emergency Board to which reference has been made? A. Yes, sir.
- Q. And it was on that controversy that the Emergency Board reported? A. Yes, sir.
- Q. That is the report which has been marked here as Exhibit A?

 A. That is correct.
- Q. Following the report of the Emergency Board what changes were made in the contracts between the two organizations and the Southern Pacific which were related in any way to the action of the Emergency Board?
- A. Well, the Agreement that had been previously negotiated between the management and the B. L. E. was abrogated, and the provisions governing the part-time mileage, that is, a man who worked part of the month as an engineer and part of the month as a fireman, were written into our contract.
- Mr. Richberg: May it please the Court, I am not asking the witness further as to the details of that controversy because they are set up in a more impartial manner in the report of the Emergency

Board, and reference can be had there in the report to the statement of facts of that controversy.

Q. I want to call your attention, Mr. Robertson, to the provision in the Railway Labor Act of 1926, Section 3, First C, and in the amendments to the Railway Labor Act of 1934, Section 3 First I, particularly to one phrase which appears in both places which refers to the handling of grievance disputes, the phrase reading as follows:

Mr. Naus: You refer to the 1926 section?

Mr. Richberg: I refer to the 1926 section, 1934 amendment, [98] to show it was common to both. I make reference at the present time to the Act in the United States Code. I will give the correct reference to the section that appears in the Code now, as Section 153 in paragraph I.

Mr. Naus: 3 First I.

Mr. Richberg: It reads as follows"

of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes."

Q. With your familiarity, Mr. Robertson, with the practice on the railroads over a long period of

years in the handling of grievance disputes, what is meant by "the usual manner" in which disputes are handled? What is the usual manner in which such disputes are handled?

Mr. Naus: One moment, if the Court please, I object to the question as merely calling for an opinion as to what this statute means. He has read the statute to him and now asks, "Now, Mr. Witness, what does that statute mean?"

Mr. Richberg: If the Court please, I read the statute and called attention to a certain portion. Then I rephrased my question to ask the witness, What is the usual manner of handling disputes on the railroads?

The Court: I will allow the question in that form.

A. The usual manner of handling disputes of questions on the railroad is the same today as it was when the statute was written. [99] Two practical railroad officials and two practical railroad men, members of the organizations interested in this law, framed it with the assistance of counsel on both sides. When we drafted the law and understook—

Mr. Naus: One moment, if the Court please. The witness is departing from the question. He is launching off into who drew the law. What has that got to do with the question? I will ask that the answer go out as not responsive.

The Court: It goes out. Read the question.

Mr. Richberg: Mr. Robertson, if you will confine your answer to the question:

"What is the usual manner of handling grievances?"

The usual manner of handling grievances today, if a man has a grievance he takes it to his local lodge-I am speaking now of the B. of L. F. & E .takes it to his local lodge and files it. If the Lodge thinks he has a meritorious case, they refersit to the local chairman to handle it. He takes it up with the local official. On some railroads you are required to take it up with the mechanical department officials. On others you take it up with the operating department officials. The usual manner is, it is referred to the local committee by the man who has a grievance, referred to the local committee or lodge of which he is a member, and he takes it up and handles it with the local man, and when he has failed to reach a settlement, it is then referred to the general chairman. The general chairman then takes it up with the local officials. If he fails; he usually calls on the organization, the Grand Lodge of his organization, to send an officer, who then takes and handles it with the higher official, and if they fail to make a settlement, they invoke the other portions of the Act-mediation, arbitration, and in [100] some instances the appointment of an Emergeney Board. That is the usual manner.

- Q. It is a fact, Mr. Robertson, certain types of grievance cases are handled which go eventually to the National Adjustment Board set up under the Act for final determination of such cases?
- A. That is true.
- Q. Is it also a fact that before that Board the individual employee is represented by designated representatives of the organization who have handled the case for him heretofore?
 - A. Yes, sir.
- Q. I also call your attention to the provision in the present Railway Labor Act, Section 152, paragraph 4, to which reference has heretofore been made, and which reads as follows:

"The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

I will ask you if this declaration of the right of the majority of the craft or class changed in any way the previously existing custom or practice of the two Brotherhoods that represent respectively the Engineers and Firemen? In other words, were they accustomed prior to this to be represented for collective bargaining by the organization representing the majority of the craft?

A. They were, yes.

Mr. Naus: One moment. I ask that the answer go out for the purpose of the objection. I object to

that as calling for an opinion and legal conclusion. If the Court please, the Supreme Court never spoke on the Act of 1934 until March 1937, and it is not very long after that before this suit was filed, as time goes, and how are we concerned with what the practice may have been elsewhere? We are talking about the Pacific Lines of the Southern Pacific. The evidence so far shows we did not acquiesce [101] in this Firemen's Schedule. It was not printed until December of 1939 and, too. I think it was within a month or two after that schedule was printed and published that this suit was filed. What is the point of this witness giving his opinion as to the practice on some other occasion?

Mr. Richberg: I did not ask that. The question asked the witness was whether this declaration of a right changed the preceding practice as a mater of history. I did not ask his opinion at all. I asked whether this was a fact that this was the practice between the organizations and the railroad prior to its being written into the Act.

The Court: I will allow the answer to stand,

Mr. Richberg: Q. Turning now to the question of representation, Mr. Robertson, has your Brother-hood ever claimed the right to represent a member or a non-member having a grievance dispute against the wishes of the employee who had the grievance?

A. No. sir.

Q. Has your Brotherhood ever claimed the right to control the settlement of a grievance of a member (Testimony of David B. Robertson.)
or non-member who did not wish to be represented
by your Brotherhood in the settlement of his grievance?

A. No. sir.

- Q. Has there been differences between your organization and the Brotherhood of Locomotive Engineers and this Railroad and elsewhere regarding the right of representation of members in grievance disputes? A. Yes, sir.
- Q. Has that been raised by the claim the Brotherhood of Locomotive Engineers has a right to represent members of your organization in certain disputes? A. Yes, sir.
- Q. Has this matter been the subject of discussion, consideration, and action by the National Mediation Board, whose services have been brought in under the provisions of the Railway Labor Act!

[102]

A. Yes, sir.

Q. Have you a copy of the letter written by Judge Carmalt, a member of the National Mediation Board, on January 4, 1936, addressed to the Chief Executives of the two Brotherhoods, the Engineers and the Firemen, expressing the opinion of the National Mediation Board as to the proper consideration of the law concerning representation of employees in grievance cases?

A. Yes, sir.

Mr. Richberg: I have a copy of that letter. Mr. Robertson has the original. As I have stated, if your Honor please, it is addressed to the Executives of the two organizations, stating the official opinion

of the National Mediation Board which, I may say in brief, was to the effect that the claim of the Brotherhood of Locomotive Engineers was unlawful and contrary to the Railway Labor Act.

Mr. Naus: I make no point about the authenticity of the letter or its signature, so far as its being a genuine document is concerned. I make no point as to the foundation of the offer of a copy. All that I waive. I object to the letter itself as being nothing but opinion and conclusion and in no way binding upon this Court.

The Court: It will be marked B for identification.

EXHIBIT B

For Identification National Mediation Board Washington

January 4, 1936.

Messrs. A. Johnston, Grand Chief Engineer

Brotherhood of Locomotive Engineers
1118 B. of L. E. Bldg.
Cleveland, Ohio

D. B. Robertson, President

Brotherhood of Locomotive Firemen &
Enginemen

· 318 Keith Bldg. Cleveland, Ohio

Gentlemen:

Please be referred to my letter of August 12, 1935, and the several conferences we have had concerning

my proposal to endeavor in some manner to compose some of the differences between your Organizations. After a careful study of the history of the differences and the circumstances and conditions surrounding the cases now pending before the National Mediation Board, I have reached the conclusion that it is too early to make definite proposals that reach beyond the scope of the cases now pending before the National Mediation Board. On September 11, 1934, the Board addressed the Railroad Labor Executives Association on the subject of jurisdictional disputes and advised that to the extent we were empowered under the Railway Labor Act we would decide such cases as were brought before us, but the differences between your Organizations have become so far reaching, that they can only be cleared by fundamental changes in policy by both Organizations or by some sort of amalgamation, association or joint contract which would bind both Or-. ganizations locally as well as nationally.

However, some method of composing the differences must be adopted if the Organizations are to maintain peaceful relations with the railroad employ is. While it is no proper function of a Member of the National Mediation Board to suggest policies that should be followed by the Organizations, it is appropriate that we point, out to you that a continuation of the jurisdictional warfare now apparently under way is likely to thwart the main purposes of the Railway Labor Act so far as your Organizations are concerned.

Managements will be in position to take advantage of the feeling of antagonism that has grown in each Organization against the other, in the belief that while fighting against one another your attention will be diverted from dealing with the relations of your memberships with the managements. In certain in-

#2-Messrs. A. Johnston

D. B. Robertson .

stances one or the other of your Organizations is working under the domination of management in a manner to develop evils akin to those of company unions. I doubt whether your membership appreciates to what extent the effective strength of the Organization is being undermined.

Your Local Organizations must be controlled so that peace and harmony may exist between them. If this can not be done there is defective organization that if not speedily corrected by convention action is likely to result in a very great lack of efficiency and, to the extent that cases are handled by the National Mediation Board, the machinery of the Railway Labor Act will be impaired. I assure you that my interest in bringing about happier relations between your Organizations is without the slightest bias for or against either Organization. I am interested only in a development of the most efficient service for the membership that can be developed under the Law, but a review of the juris-

(Testimony of David B. Robertson.)
dictional disputes now pending before the Board
will serve to demonstrate that some mutually satisfactory set of principles must be established that
will be binding upon the Organizations, their officers
and members or else the Board can find no basis of
settlement of the cases before it. This proposition
must be faced by the Organizations before any

History of Disputes Between 1928 and 1934

effective action can be taken under the Law.

The Chicago Joint Agreement kept peace between the Organizations from 1913 to 1927, but the limitation of mileage therein prescribed was in itself objectionable to the older men. Their objections to it became intensified by the interpretation insisted upon by the B. of L. F. & E., whereby all emergency mileage was charged to determine the average mileage made by the men on the extra board whether or not it was made by the men on the board. By this, interpretation of the rule the B. of L. F. & E. often succeeded in regulating the number of men on the engineers' board so much as to limit the mileage made by the men thereon far below the minimum mileage which would have justified reducing the board. By this process, the work available for firemen was greatly increased. The abrogation of the Agreement by the B. of L. E., however, served to free the B. of L. F. & E. in 1928, and thereafter to make mileage limitations for the men in the Firemen's group far below that that had been maintained

under the Chicago Joint Agreement, and as more and more men were demoted through the depression, the antagonism of the older men to any mileage limitation has become almost an obsession.

This has presented one of the fundamental objections to amalgamation of the two Organizations. The B. of L. E. is not willing to submit the question of mileage limitation for engineers to a majority vote of the membership of the two Organizations. And the Organizations are so far apart on this question that it may be necessary to leave out any consideration of it in a joint working agreement except to provide rules for the regulation of mileage of part time men. Of such a rule I shall speak later.

=3-Messys. D. B. Robertson

A. Johnston

After abrogation of the Chicago Agreement, the B. of L. F. & E. took over the engineers' contract on the Georgia, Southern & Florida. Whether or not the specific facts involved in that case furnish a justification for the action taken by the B. of L. F. & E. is a very controversial question. A good argument could be made, perhaps, for either one of the Organizations in respect of this matter according as one interprets the facts, but it does not admit of argument that the B. of L. F. & E. would have been prohibited from taking over the contract if the

Chicago Joint Agreement had remained in effect. The fact that the Organization took advantage of the abrogation of the Chicago Agreement by the engineers much intensified the controversy between the Organizations. In the long range view, it would seem to have been an unwise thing to do. It may be remarked in passing that the litigation which ensued over the right in an election for representation to vote as engineers promoted men who, at the time of the election had been demoted to the firemen's ranks, resulted in the decision which the National Mediation Board has followed as a sound interpretation of the Law in making up eligible lists for elections in other crafts.

There followed an attempt by the B. of L. F. & E. to take over the engineers' contract on the Florida East Coast. As is well known the firemen had no contract for firemen on that property. Their strike many years ago was unsuccessful and the management filled the jobs with negroes. During all of the subsequent years the B. of L. E., holding the contract for engineers, has been unable to negotiate with the management that provision of the Chicago Joint Agreement which would give seniority rights to engineers in firemen's jobs in case of demotion on account of reduction in force. Had that provision been made effective, it is probable that the subsequent disputes between the Organizations would not have occurred. There is much difference of

view as to whether or not it was feasible to have made such a provision in the engineers' contract, but it would seem that some progress in that direction might have been made had sufficiently strong steps been taken by the Engineers' Committee.

In later years, it is said, that at the solicitation of the management the General Chairman of the B. of L. E. has individually acted as representative of the negro firemen upon payment by them to him of compensation for such service, at a time that his own demoted engineers were walking the streets in idleness, while the unorganized negroes were protected in their positions firing oil-burning engines.

Whatever the merits of this dispute or the desires of the membership of the B. of L. E., it is certain that the taking over of the engineers' contract by the B. of L. F. & E. is as much a violation of the spirit of the Chicago Joint Agreement as was the case on the Georgia, Southern & Florida, and it is

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equally questionable whether in the long range view it is the wise move to have made.

On the other hand, the B. of L. E. is said to have made effort to take over the firemen's contract on a considerable number of roads, but I find no record that any of these cases reached the former Mediation Board or the Courts. Whether such cases were

developed as reprisals for the action of the B. of L. F. & E. in the two cases heretofore cited or were begun because of local uncontrolled activity, the policy in the long range view is as objectionable as that of the B. of L. F. & E. in the two cases cited.

Subsequent to the abrogation of the Chicago Joint Agreement, effort was made by the B. of L. E. to have the confracts on many railroads so amended as to give to the General Adjustment Committee of the Engineers the exclusive right to represent engineers in disputes with management. This contention, as well as that of the two cases heretofore cited, ignores entirely the provision of the Chicago Joint Agreement in which it was conceded that the jurisdiction of the B. of L. E. extended over the craft of engi-. neers, and that of the B. of L. F. & E. over the employees engaged as firemen, hostlers and hostler helpers, with the further proviso that the members of each Organization had the right to call in the Committee of their own Organization to represent them in grievance cases but under the interpretation of the contract made by the Organization which held the contract. On only one Class I Railroad did the engineers succeed in getting the exclusive right of representation. The policy of the B. of L. E. in this regard is not only in violation of the Chicago Joint Agreement but is also in violation of the amended Railway Labor Act, as will be discussed later.

Cases Arising Under the Amended Railway Labor Act

The first case of importance arising under the amended Railway Labor Act is that brought by the B. of L. F. & E. requesting the establishment of a rule on the International-Great Northern, which would give to the members of the B. of L. F. & E., when acting as engineers, the right to have the General Chairman of that Organization represent them in grievance cases. It has not been possible to bring about a settlement of this case for the reason, that owing to local conditions the Company has declined to serve notice to open that provision of the engineers' contract which gives to the B. of L. E. the exclusive right of representation of engineers. This Board has ruled that a contract giving exclusive right of representation for grievance cases to any Organization is unlawful under the amended Law. It said in a letter to the management:

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The National Mediation Board is compelled to view as a matter of law that the supplemental contract effective October 17, 1928, with the B. of L. E. is absolutely illegal, since the Company interprets it to give to the engineers' committee a right to represent any employee who

desires another representation. No contract between a railroad employer and an organization of employees can give to that organization any right to represent an individual employee unless the employee himself assents. The right of an individual to designate the representative of his choice is guaranteed by Section 2, (Second) and the carrier is prohibited by Section 2, (Third) from interfering, influencing, coercing or seeking in any manner to prevent the designation by its employees of their representatives. There is no possible escape from this conclusion as it seems to us, since Section 2, (Eighth) provides that Paragraph Third of the Section is made a part of the contract of employment between the carrier and each employee.

Controversy between the Organizations on this Railroad is the outgrowth of local conditions for which the General Chairman of the B. of L. F. & E. was originally largely responsible but management took advantage of it to make this representation contract—of doubtful validity when made and now clearly in violation of the amended Railway Labor Act. Wherever the original fault may have laid, operation under the exclusive representation rule not only practically denies any representation under either contract for the members of the B, of L. F. & E. but produces a relationship between management and all employees in engine service that serves no good purpose.

(Testimony of David B. Robertson.) Mileage Limitation

This question has come to the Board in only two cases, but they illustrate the necessity for some sort of agreement between the Organizations. Both Chief Executives have agreed that the principles which the Board set out on this question in its letter of November 30, 1934, were sound and should be applied in settling the question of mileage limitation for part time men. It so happens that control of the part time men on the Texas Pacific is in the hands of the B. of L. E., while that on the Reading is in the hands of the B. of L. F. & E. The Chairman of the Board made some efforts to mediate the case

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filed on the Texas & Pacific, and the General Chairman of the Engineers, while admitting that the rules in vogue there are in violation of the principles agreed upon by the Grand Chiefs, insists that the rule under which the engineers are operating is for their benefit and cannot be changed by the Grand Chief Engineer under the laws of the Organization. So long as that condition exists on the Texas & Pacific, the B. of L. F. & E. refuses to make any change in the rule which works in favor of the firemen on the Reading.

It seems clear that the two Organizations cannot be brought into agreement with respect to a proper (Testimony of David B. Robertson.) mileage limitation for men holding regular assignments and the rule on this subject that can be agreed to will apply only to part time men. But a standard rule for these men along the lines agreed to by yourselves and set down in our letter of November 30, 1934, can and should be made binding upon the two organizations.'

As the whole question of mileage limitation is the most fundamental obstacle to an amalgamation of the Organizations, steps should be taken to provide a uniform rule to govern the regulation of the part time men that will be binding upon both Organizations. It admittedly is practical to make such a rule that is fair to the members of both Organizations and neither Organization can afford to let a lack of control of its local organizations interfere with its enactment.

Zoning of Seniority Districts

One case is before the Board in which the B. of L. F. & E. has sought the abrogation of an agreement signed by the General Chairman of the two Organizations and the Richmond, Fredericksburg & Potomac, whereby the single seniority district on that Railroad is zoned in practical accordance with Rule G-2, of Article III, of the later drafts of the Chicago Joint Agreement. The firemen contend that inasmuch as this Rule affects only men working as firemen, it is their exclusive right to determine what

the Rule shall be and, in any case, that they have the same right to withdraw from the three-party agreement as they would if the contract were a twoparty contract between the Railroad Company and their Organization. No settlement of this case can be had if it is left to an agreement between the Organizations. The probability, however, is that the Company will eventually see the strength of the legal position taken by the Firemen's Organization and the case can then be settled between the Company and the Firemen. It is mentioned here only as indicating the length to which disagreement has come between the Organizations. Doubtless you two gentlemen can agree in this instance on the soundness of the position of the B. of L. F. & E. that it has the sole power to legislate for firemen, but the General Chairman of the Engineers persists in taking the stand that the local Adjustment Committee on the Railroad is the sole arbiter of the policy to be pürsued.

Representation

The Board has before it a number of cases, mostly in the Southeast, in which your Organizations are each seeking to gain the right to represent the men in the craft for which the opposing Organization customarily legislates. The question is largely confined to the Southeast where the situation is complicated by the large number of negro firemen who

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who are not admitted to membership in either Organization. Where the rule is in effect that not more than 50% of the employees working as firemen shall be negroes and the negroes are persuaded to vote in favor of the B. of L. E., it only requires the vote of one or two white firemen to swing the election in favor of the B. of L. E. How long the negroes can be persuaded to vote solidly for the B. of L. E. is, of course, problematical, but the mere raising of the question demonstrates the unhealthy condition that has grown in the relations between the two Organizations when the votes of the colored employees are used to determine white representation. From an organization standpoint it would seem more objectionable than anything that has preceded it.

Jurisdictional raids are made in the face of the provision with which almost every engine service contract opens, viz.: That of conceding the right of the B. of L. E. to make and maintain agreements for engineers and a similar right for the B. of L. F. & E. to represent firemen, hostlers and hostler helpers. If the Board fixes an eligible list in these cases to vote the firemen, hostlers and hostler helpers in one class and the B. of L. E. continues its present policy it is likely to take over the contracts on all roads where the negro employees constitute

a controlling minority. One may well question the long range wisdom of permitting that kind of tactics to be applied, because of the degrading effect in the immediate locale where applied, because of the internal dissension in the B. of L. E. Organization that is inevitable, and because of the ultimate menace to the present set-up of railway labor organization in the impetus that will be given to the general movement toward organization of a vertical union among the colored railway employees.

I have discussed some of these pending cases frankly in order on the one hand, that you may see the importance of settling them and, on the other, that every one may see the futility of continuing the guerilla warfare that appears now to be under way. What one organization gains in one place it loses in another and untold money and time are wasted that might better be devoted to the real affairs of the membership. Railroad managements advise the Board that these jurisdictional disputes are having a very bad effect upon the operation of the railroads. On the other hand, there is evidence that in certain instances managements promote these controversies in an effort to divert the activities of the officers of the Organizations from the customary channels.

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I regard jurisdictional disputes between standard organizations as being very detrimental to the effective working of the Railway Labor Act as a whole, and the Board is arranging always to give preference to mediation cases that involve the welfare of the workers, leaving the Organizations to adjust their differences for themselves.

I am authorized by the Board to say that if and when your Organizations shall both appoint committees with authority to act, the Board will be glad to devote my time; or that of one of the members of the Board, to mediate between such authoritative committees in an effort to work out an agreement between the two Organizations that will cover their relations in such way as to avoid, as far as practicable, jurisdictional disputes, but nothing can be done in this regard until the B. of L. E. convention shall set up an authority therefor that will bind the local Organizations.

If you regard this letter as of any importance in pointing out to your members the bad effect on your Organizations and on organized labor of continuing the present controversy, or that the letter presents any line of criticism which would be helpful in promoting the making of a new joint agreement adapted to present-day conditions, I have no objection to your use of it in any way you see fit, either by way

(Testimony of David B. Robertson.)
of publication in your Journals or circularizing the membership. I ask only that before using it in any way, you agree between yourselves that it will not be used by one Organization without the consent of the other.

Before closing it may serve a purpose to set out the factors that must be considered in negotiation of a joint working arrangement if matters in disagreement are to be composed. Such a statement may demonstrate the feasibility of making an agreement in the light of present conditions.

Factors to Be Considered in Disposing of Jurisdictional Disputes

The principal factors bearing upon the development of some working arrangement between the Organizations are these:

- 1. All men in engine service, whether as engineers, firemen, hostlers or hostler helpers, are eligible for membership in both Organizations. There is, therefore, rivalry in both Organizations in a search for a sustaining membership.
- 2. Each Organization has a nucleus of membership through insurance that has been in effect for many years. In other words, men who have a substantial insurance with the B. of L. E. will remain with that Organization, and conversely, men having a substantial insurance with the B. of L. F. & E. will remain with it.

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- 3. Competition for membership therefore is open only as to those of the crafts who are not allied to one or the other Organization by insurance ties.
- 4. The officials of each Organization are selected from the membership which is tied to it by the ties of substantial insurance, with the result that the B. of L. E. Organization is officered by the older men in point of seniority, whereas the B. of L. F. & E. Organization is made up of officers of the next younger group on the seniority roster.
- 5. The B. of L. E. officials are committed to a policy of retaining large mileage earnings on regularly assigned runs in accordance with seniority without much regard for the younger men who would be furloughed if the mileage limitations provided in the Chicago Agreement were continued as to all regular assignments.
- 6. The B. of L. F. & E. officers are committed to the principle of limiting the mileage to be carned by individuals in an effort to spread the work, so that the number of men on furlough will be minimized.
- 7. The divergence of view on mileage limitation is such that it does not appear presently likely that an agreement can be had to limit mileage of all enginemen on a mutually satisfactory basis.

- 8. The B. of L. F. & E. assert the right to control the number of men to be assigned to the engineers' extra board by charging to the board emergency mileage earned by others when extra board engineers are not available.
- 9. The mileage limitation of part time men can be arranged on a mutually satisfactory basis only if within each Organization some central authority is set up to control the action of the committees on all railroads on a standardized basis.
- 10. Both Organizations are constantly seeking to negotiate rules giving them some measure of control of wages, rules and working conditions for the other craft than that for which they are authorized to legislate.
- 11. Both Organizations are constantly seeking sufficient authorizations to take over the entire contract for the other craft.
- 12. In the southeastern region the negro question interjects itself in that the B. of L. E. are soliciting the votes of negro firemen so as to align

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them with a small minority of the whites in the craft so as to control the representation of the craft.

13. A provision will be necessary to care for employment and promotion to the engineer assign-

ments in case an increase of business again occurs.

There are probably other factors that will have to be considered if a serious negotiation is begun. You and your membership are better advised in all these matters than am I but the mere statement of the points of difference between the Organizations is to demonstrate that a new working agreement, based on past experience and present conditions, is practicable and will re-establish peace between the Organizations. The appointment of committees authorized to speak for the memberships in a national way is earnestly recommended.

Very truly yours.

James W. Carmalt

(Signed), JAMES W. CARMALT

JWC:m

[Endorsed]: Filed Oct. 10, 1940.

Mr. Richberg: May I point out to the Court in this connection, in your consideration of this letter, the National Mediation Board is given definite functions to determine representations. It can take votes, that is, require them to ballot, take secret ballots, and determine who is entitled to represent a craft or class. It is not a body of mere recommendation. It is an administrative body under the law of Congress; hence, at the very least, it has the administration of the law throughout the United

States, and I think it carries more weight than Mr. Naus indicated. [103] It has certainly a certain force, the exact extent of which, of course, I do not say. The Board might render an opinion and the Court, having the question presented to it, would be entirely free to find the Board wrong.

Mr. Naus: I would rather see a judicial opinion arrived at in the usual way as affording much more light and guidance under the Act.

Mr. Richberg: Q. Prior to this letter of 1936 was there a letter written by Mr. Leiserson, Chairman of this Board, addressed to Mr. Goff, the Vice-President of your Organization, and Mr. Beals, General Superintendent of the Florida East Coast Railroad, on the same subject matter, Mr. Robertson? A. Yes, sir.

. Q. You have a copy of that letter also?

A. Yes, sir.

Mr. Richberg: I offer a copy of that letter, dated September 21, 1934, and, I assume, subject to the same objection?

Mr. Naus; I will say, Mr. Richberg, I make the same waiver as I did to the others, as to the genuineness of the letters' signature, the trueness of the copy. I object, however, on the ground it states opinion, conclusion, and hearsay. As to this letter it is also res inter alios acta.

The Court: Received for identification.

(The document in question was thereupon marked Exhibit "C", for identification.)

(Testimony of David B. Robertson.)
EXHIBIT C

For Identification National Mediation Board Washington

September 21, 1934.

Mr. C. J. Goff, Vice President,
Brotherhood of Locomotive Firemen and
Enginemen,
Carling Hotel,
Jacksonville, Florida.

Mr. C. L. Beals, General Superintendent, Florida East Coast Railroad, St. Augustine, Florida.

Gentlemen:

Referring to the application of the Brotherhood of Locomotive Firemen and Enginemen for the services of the Board in the dispute with the Florida East Coast Railroad regarding the grievances of six engineers, the Board has given careful consideration to the provisions of the Railway Labor Act, as amended, that are applicable to the question in dispute.

As the Board understands the facts they are:

- (1) The case involves grievances of six engineers who have been disciplined or discharged and who desire to discuss their grievances with the General Superintendent.
- (2) The men are members of the Brotherhood of Locomotive Firemen and Enginemen.

- (3) They desire to be represented, in conferring with the General Superintendent, by the Vice President of this Brotherhood, who is not an employee of the Florida East Coast Railroad.
 - (4) The contract covering the engineers is with the Brotherhood of Locomotive Engineers.
 - (5) The management refuses to confer with the Vice President of the Brotherhood of Locomotive Firemen and Enginemen as the representative of the individuals who have grievances, claiming that in conferences between carriers and employees, up to and including the chief operating officer of the carrier, before an appeal is taken to an Adjustment Board, disputes must be handled according to the "usual manner" of holding conferences for considering individual grievances.

Section 2, Second, of the amended Railway Labor Act provides that:

"All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

This, it would appear, requires that in conferences between a carrier and its employees regarding any dispute, the employees interested in the dispute may

(Testimony of David B. Robertson.)
designate and authorize any representative they
choose so to confer. But the management contends
that "in controversies with INDIVIDUALS (as
distinguished from a whole class of employees) the
employee is entitled only to representation such as
he was entitled to IN THE USUAL MANNER
before the amended Act was passed, as provided in
Paragraph i of Section Three". And further, that
"there is a very clear distinction between the selection by employees of representatives to handle disputes with the management, and the selection of
representatives to handle disputes that are referred
to a National, Regional or System Adjustment
Board".

The management contends that its action in refusing to permit a non-employee of the Company and efficer of the Brotherhood of Locomotive Firemen and Enginemen, to represent the aggrieved employees is required by the language of Section 3 (i) of the Railway Labor Act reading as follows:

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach

an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

It claims that the "usual manner" of dealing with grievances as stated in the law is for the person aggrieved to present his own case or be represented by another employee of the Company and points to paragraphs (a) and (d) of Article 56 of its contract with the Brotherhood of Locomotive Engineers as confirming its interpretation of the Railway Labor Act. These paragraphs provide that:

- "(a) An Engineer or an Outside Hostler will not be suspended or discharged without a fair and impartial investigation. At this investigation, which shall be in his presence, he may have present an Engineer or Outside Hostler in good standing, and such witnesses as may have information in the case. The case will not be reopened unless new evidence is submitted in writing within sixty (60) days after he has been notified. If exonerated he will be paid for time lost.
- (d) If an Engineer or an Outside Hostler considers himself unjustly disciplined by the Superintendent or is dissatisfied with the decision, he has the right of appeal to the next

(Testimony of David B. Robertson.)
higher officer of the Railway within sixty (60)
days of the Date of decision. If he does not
make an appeal within that time, the case will
be closed and not reconsidered."

This contention of the earrier appears to us not to be in accordance with the usual practice among the railroads generally and not in accordance with the contract provision on which it relies. It seems to be the general practice among railroads to grant an aggrieved employee a hearing, before his Superintendent or immediate superior officer, prior to the taking of disciplinary action; and at such hearing he may have as his representative another employee of the Company in good standing. But when, as here, the case is taken on appeal to the chief operating officer after disciplinary action has been taken, the employee may be and generally is represented by an officer of his union whether or not such officer is an employee of the Company.

The question resolves itself, therefore, down to the problem whether a labor organization to which the engineers belong, but which does not hold the contract covering all the engineers, may, in cases of individual grievances, be designated by the aggrieved employees to represent them in conferences with the management.

The Board finds that it has been a common practice on the railroads generally to handle eases of individual grievances on appeal to higher officials in conferences between such officials and officers of

labor organizations regardless of whether these were employees of the carriers or not; and that it has been quite common for officers of employees organizations to represent aggrieved employees in such conferences with higher officials even though these organizations did not happen to hold the contracts covering the class of such employees.

In view of this common practice, the Board is ofthe opinion that in conferences between carriers and
employees to consider grievances of employees who
have already been disciplined and have carried their
cases to higher operating officials, the "usual manner" of handling such cases has been to permit
aggrieved employees to designate representatives for
such conferences without regard to whether the
representatives were employees of the carrier or not,
or whether they were officers of an organization
which held a contract or not.

The Board therefore holds that the management is required both by Section 2, Second, and Section 3 (i) of the Railway Labor Act, as amended, to confer with the representative of the Brotherhood of Locomotive Firemen and Enginemen whom the six engineers designated as their representative for handling their grievances.

By order of the NATIONAL MEDIATION BOARD.

WM. M. LEISERSON, Chairman.

WmL:S

[Endorsed]: Filed Oct. 10, 1940.

Mr. Richberg: May it please your Honor, I would like to ask Counsel, to save asking the question of the witness, whether there is this understanding in the record at the present time, and that is that the addendum to Rule 43, which is not set forth in your Bill of Complaint, is, as it purports to be, the incorporation of a suggestion made by Dr. Leiserson as the basis [104] for the settlement of a dispute which was involved in the Emergency Board in 1937?

Mr. Naus: That is true.

Mr. Richberg: That is a fact, is it not? I assume Mr. Mason, that is correct?

Mr. Mason: You are correct.

Mr. Richberg: If the Court please, that might save my asking Mr. Robertson three or four questions. I am trying to save time.

- Q. Mr. Robertson, are there any railroads where the engineers are not permitted to displace firemen in reductions of engineering service? A. Yes.
 - Q. Will you mention one such road?
 - A. Florida East Coast Railroad.
- Q. How does it happen that there is such an exception on that road, what peculiar condition?
 - A. They employ only colored firemen.
- Q. Is it a fact that the colored firemen are never permitted to be engineers?
 - A. That is correct, ves.
 - Q. Therefore, when there are reductions in the

(Testimony of David B. Robertson.)
force of engineers, the engineers are not allowed to displace firemen?

- A. That is correct, yes, sir.
- Q The engineers are simply out of a job?
- A. Yes, sir.
- Q. When there is an increase in the engineering force, necessary because of a rise in traffic, how does the Railroad get additional engineers?
- A. Employ them from other railroads, men who are out of employment.
- Q. So in other words, they have no reservoir of firemen that they can constantly draw on to maintain their engine service?

 A. No, sir.
- Q. During the depression of 1929 and following did you observe [105] conditions on the Florida East Coast? A. Yes, sir.
- Q Were there a large number of engineers out of service at the time?

Mr. Naus: Objected to as time-consuming on a matter that turns out to be purely collateral. We are not interested in the Negro situation.

Mr. Richberg: If the Court please, it has nothing to do with the Negro situation. I am meeting an issue raised by Mr. Naus, and that is you could entirely eliminate the provisions for the demotion of the Engineers in the contract without injuring them, and I am trying to bring out the effect on the service.

The Court: I will allow the question.

A. Yes, sir, I did.

Mr. Richberg: Q. Was the result a large number of unemployed engineers? A. Yes, sir.

- Q. Where the senior firemen continued their service? A. Yes, sir.
- Q. Is it the position of your organization and your contention in this proceeding that the Brother-hood of Locomotive Engineers should be given an exclusive right to contract with the railroads concerning conditions governing the demotion of engineers and displacement of firemen?
- A. It is our position they should not be given that right.
- Q. Is it your position that should be exercised jointly by the two organizations? A. Yes, sir.
- Q In default of the possibility of agreement between the two organizations, is it your position that that is a matter within the field and jurisdiction of your organization?

 A. Yes, sir.

Mr. Richberg: May I call the Court's attention at this time to a passage in the Railway Labor Act which I did not read farlier, but which I think is pertinent, and that is the provision which [106] occurs in the first section, Section 151, and in the fifth paragraph of that section. The proviso at the end of the section reads as follows:

"Provided, however, that no occupational classification made by order of the Interstate Commerce Commission shall be construed to

define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this act or by the orders of the Commission."

I call your Honor's attention to that in connection with the testimony that has just been given as to the position of this organization as to its jurisdiction, which the law specifically provides is not determined by the Act, and I am at a loss therefore to understand how the Court, on the basis of the Act, can determine the unisdiction of the organization when the Act explicitly provides against that. That is in accordance with the statement of jurisdiction claimed by the organization itself in the premises. I think that is all I have to ask of Mr. Robertson, May I ask your Honor's indulgence?

The Court: There is nothing further at this time?

Mr. Richberg: Nothing further.

The Court: We will adjourn, then, until tomorrow morning at 10:00 o'clock.

⁽Thereupon an adjournment was taken until tomorrow, Friday, October 11, 1940, at 10:00 o'clock a.m.) [107]

Thursday, October 11, 1940 10:00 O'clock A. M.

The Court: General Committee of Adjustment against Southern Pacific.

Mr. Richberg: May it please the Court, I would like to ask Mr. Robertson to resume the stand for just a few further questions.

DAVID B. ROBERTSON,

Direct Examination (Resumed.)

Mr. Richberg: Q. Mr. Robertson, you testified yesterday regarding the usual manner of handling grievances on the railroads, and stated what that was. I want to ask you whether that usual manner of handling grievances is the same to-day as it was before the passage of the Railway Labor Act!

- A. Yes, sir.
- Q. On how many railroads, Mr. Robertson, does the Brotherhood of Locomotive Firemen and Enginemen hold the contracts governing engineers' service? A. Seventy-five.
- Q. Does the Brotherhood of Locomotive Engineers have and exercise the right to represent its engineer members in grievances on such roads!
 - A. Yes.
- Q. Without controversy so far as your organization is concerned? A. Yes, sir.

Q. Referring to one specific instance, were you asked specifically by the Grand Chief, Johnson, the Chief Executive of the Engineers' Brotherhood, if you took the position that the engineers had that right to represent their engineer members in grievances on the on the Florida East Coast Railroad where you hold the contract?

A. Yes, sir, I was,

Q Does the Brotherhood of Locomotive Engineers exercise the right to handle grievances of firemen who are members of their organ- [108] ization on all roads where your organization, the Brotherhood of Locomotive Firemen and Enginemen, hold the contract for firemen?

A. Yes, sir.

Q. On how many railroads does the Brotherhood of Locomotive Engineers hold the firemen's contract?

A. On two, to my knowledge.

Q. Yesterday, Mr. Robertson, Mr. Peterson, a witness for the plaintiff, testitied as to the meaning of the word "equivalent", which is used, for example, in Article XLIII of the Firemen's Agreement, which is quoted on page 5 of the complaint. I will read the first condition under Section 1, which is as follows:

"First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled, or chain-gang freight, or other service paying freight rates,

are averaging the equivalent of 3200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month."

How is the equivalent of such mileage measured, that is, what does that phrase mean; "earning the equivalent of"?

- A. Well, the basic day is founded on 100 miles or less, or eight hours or less in freight service, and if a man works 10 hours, his hours are reduced to miles. If he doesn't make any overtime, it is based on 12½ miles an hour. If he makes overtime, the overtime is reduced to miles on the basis of 18¾ miles for each hour overtime. So "equivalent" means the hours made reduced to its equivalent in mileage.
 - Q Is that straight mileage! A. Pardon!
- Q., Mr. Naus asked the question whether you meant straight miles by that. I do not know what his question means. [109]

Mr. Naus: Q. Do you convert the overtime back into freight miles?

- A: If overtime is made, the overtime is computed on the basis of 18-3/4 miles per hour.
 - Q. So that is converted into miles?
 - A. That is right.
- Q. In other words, if a man's work is computed on the basis of miles an hour, the hours are resolved

into miles to determine the total mileage he has under this miximum?

- A. That is right, the hours are made the equivalent of miles. Money has nothing to do with it.
 - Q. Money has nothing to do with it?
 - A. No. sir.
- Q. The conversion to determine the equivalent is simply a conversion of hours into miles?
 - A. That is right.
- Q. Is that all determined by fixed, established, and accepted conversion terms? A. Yes.
- Q. Are those written into the schedules of the contract as a matter of fact?
 - A. Most of them, yes.
- Q. That is, they appear in the back of the schedules?

 A: Yes, sir.
- Q. Where does it appear in the schedule that you have, what page? It is a table, I believe.
- A. In the Firemen's Schedule it appears on pages 121 to 124.
- Q. Showing the method of converting hours into miles so as to determine what the equivalent is?
 - A. Yes, sir.

Mr. Richberg: If your Honor please, yesterday you asked one of the witnesses a question—I think it was Mr. Buckley—about a seniority situation, as to which I do not think the answer gave an entirely full picture of the situation. I am going to recall that to Mr. Robertson's attention and ask-him to explain that situation.

- Q. Yesterday, Mr. Robertson, the Judge asked whether the situation might exist where the senior fireman, the top fireman, [110] as a matter of fact, had not obtained his promition and a fireman junior to him might be promoted over him to engineer. It was stated that that condition could obtain. Could that condition obtain more than as a temporary matter?

 A. No, sir.
- Q. What is the requirement on the Southern Pacific Railroad as to a man taking his examinations and becoming eligible for promotion in order to maintain his seniority?
- . A. All men employed as firemen are required to take the examination for promotion to the position of engineer in their turn according to their seniority on the roster, on the list. If a man is called for promotion and fails, he is given six months' time in which to qualify for his next examination, If he fails the second time, he is reduced to the foot of the roster to the extent he is given one year's seniority and is required then to work up again. In other words, if a man who has been in service ten years was called for promotion and failed the second time, he is put down on the roster in a position where one year's seniority would locate him, and then he starts up again. That is the penalty for failing to qualify. Some roads drop them out of the service entirely.

In other words, throughout the country to-day the rule is if you hire out as a fireman, it is with the distinct understanding you are going to qualify for promotion.

- Q. So, in the first place, if I understand it, Mr. Robertson, firemen are required, as they are called in order, to take examinations demonstrating their ability for promotion? A. Yes, sir.
 - Q. If they fail, they lose their seniority?
 - A. That is right.
- Q. If they pass, are they then required to take positions as engineers if those positions are open?
 - A. Yes, sir.
- Q. In other words, they are not permitted to retain a satisfactory [111] fireman's position, that is, one set out to them, and not go on the extra list if they are called for service as engineers?
- A. No, they are not. They are required to take a promotion.
- Q. Is that requirement particularly brought about by the railroad's insistence?
- A. Very largely, but agreed to by the men as being a fair basis for promotion.

The Court: Q. There are some men who are satisfactory firemen who have not got either the ability or they do not apply themselves so as to be fit to become engineers? There are a few of those?

A. Very few any more, Judge. They require the man who comes into the service as a fireman to be pretty well qualified. One of the first qualifications.

is, you have got to have a high school education, and the first year you are in service you are given a book to study, and you enter what we call progressive examinations. At the end of the first year you have get to be able to demonstrate you have learned sufficient about the art of combustion to be an efficient, qualified, fireman.

As you go on you get progressive examinations in the machinery, the air brake, break-downs of locomotives, and finally into the train-operating rules.

- Q. That makes high class firemen?
- A. Yes, they do, but they do not let them stay in the service unless they qualify.

The Court: Proceed. .

Mr. Richberg: Q. Referring again to the provisions of Article XLIII of the Firemen's Agreement, which is quoted in the bill of complaint, are such provisions, referring to the engineers' mileage, maximum mileage, demotions, and so forth, found in the contracts between the Brotherhood of Locometive Firemen and Enginemen and the Railroads on practically every railroad in the country?

- A. Yes. [112]
- · Q. Is there any difference in general between those provisions in the Engineers' Agreement and those provisions in the Firemen's Agreement regarding mileage on the roads in the country?
 - A. Very little; practically all the same.
- Q: And the provisions of the two agreements on the roads are generally identical?

A. Yes.

Mr. Richberg: We have nothing further to ask, your Honor.

Cross Examination

By Mr. Naus:

Mr. Naus: Q. You say, Mr. Robertson, that provisions like, or substantially like what is found in Article XLIII of the Firemen's Schedule on the Southern Pacific may be found in practically every railroad schedule in the country pertaining to firemen?

A. Yes, sir.

Q. It is true, is it not, that such appearance in practically every firemen's schedule fliroughout the country originated after and out of companion provisions in the Chicago Joint Agreement?

A. In the terms in which they are expressed today, that is true. They were expressed in different terms and varying terms before the Chicago Joint Agreement.

The Court: Q. But to the same effect?

A. In principle, Judge, ves, sir.

Mr. Naus: Q. I hand you, Mr. Robertson, the three documents that are now court exhibits, and will you open them, please, to the '13, the '18 and the '23 revisions and amendments, and hand them to his Honor so he can lay them alongside Article XLIII of the Firemen's Schedule on the Southern Pacific and specify whether XLIII was taken directly from the Chicago Joint Agreement?

The Court: You had better give them to the Clerk.

Mr. Naus: Q. Will you open them to the place, and hand them to me and I will give them to the Clerk? You have handed me here the page that is open at Article XI.

- A. That is the one that [113] covers the mileage question, if that is what you want.
- Q. I want the one that comes nearest in identity to Article XLIII in the Firemen's Schedule on the Southern Pacific, Pacific Lines.
- A. I have Article XLIII. Is that the mileage regulations?
 - Q. On demotions and lost runs.
 - A. That is XI; here it is.

Mr. Naus: Would your Honor indulge me by looking at Article XI and laying it alongside of Article XIIII in the Firemen's Schedule, and I will proceed?

The Court: In other words, you want to read X1?

Mr. Naus: Part of XI.

The Court: That is the particular book-

Mr. Naus: It is the same article in all books, but there may have been some amendments on those two amending occasions.

The Witness: In 1918, Judge—that is the one they have in their contract. In 1923 that was put in.

The Court: If you will just not talk, so I can concentrate on this. I can't follow and listen to you. I have read the first one.

Mr. Naus: May I proceed, now?

The Court: Yes, you may.

Mr. Naus: Q. Mr. Robertson, is it not the fact that it was Article XI in the Joint Agreement, the Chicago Joint Agreement, that for the first time they gave what you have, let us say, generally referred to as the universal right of cut off engineers to go back firing?

- A. It affected that question on a number of roads, but we had already established it on some roads before the Chicago Joint Agreement.
 - Q. But not universally in the broad way that you speak of its appearance in the Firemen's Schedule at this date, isn't that correct?
 - A. I would say, quite generally. [114]
- Q. Is it or not the fact, Mr. Robertson, that as part of the Chicago Joint Agreement, a negotiation between the two brotherhoods, an agreement to which no carrier was a party, that it was growing out of the Chicago Joint Agreement beginning in 1913 that firemen had the correlative right to become promoted to engineers?
- A. Oh, no, oh, no. Firemen had a right to be promoted to engineers long before we had the Chicago Joint Agreement—ever since we have had railroads.
 - Q. Universally? A. Yes, sir.
- Q. That is true of all railroads, was it, before the Joint Agreement, that firemen had the right to be promoted to engineers?
 - A. On every railroad in the United States and Canada, that I know of, except for a period on the

Florida East Coast Railroad, where they hired no one but Negroes.

- Q. Prior to the Chicago Joint Agreement, was it or not a practice on railroads generally for a cut off engineer on one district to go freely to another without resource to any supposed firemen's rights?
 - A. That was not a practice, no, sir. .
 - Q. Did it occur?
 - A. If it did, I didn't know about it.
 - Q. Did you ever hear of it?
- A. Not in my day. As long as I have been railroading, firemen's rights to fire on the district for which they were hired has been respected by the Railroad Company and by the agreement under which they were employed.
- Q. Do you mean respected as a practice, or respected as a schedule right?
 - A. Respected as both.
- Q. Prior to the Chicago Ioint Agreement was it or not the practice for a cut off engineer to go freely from one engineer's seniority district to another without regard to firemen?
 - A. No, sir, it was not.
 - Q. Ever at any place?
 - A. Not that I know of. [115]
- Q. You can't think of a single instance of that occurring anywhere in the United States?
 - A. No, sir.
- Q. Either before or since the Chicago Agreement, is that right?

The only example I could give you of that would be this: On divisions where promotion was very rapid, and in the days you are speaking of before the Chicago Joint Agreement, back fifteen or twenty years beyond that, our industry was in an expansive state. It was almost impossible on some railroads to make enough engineers out of the firemen. The industry was expanding, to the extent that they had to seek hired engineers here and there when they did not have enough men to promote who were qualified. In that instance they hired men. That was not so much true in the Eastern District, where we have congestion of railroad mileage and railroad business; but only when it was necessary to hire men because they did not have men to be promoted did they seek to employ engineers or transfer them from one district to another.

For instance, the Texas Pacific Railroad, in the cane rush, when the cane was being harvested, why they sent out to get engineers from everywhere, because it was only about a two-and-a-half-month job. And that used to be true in the ore regions in the summer time. But the industry has settled down now. Technological advances and so forth have stabilized the industry so we haven't that any more. We do not have free interchange of engineers where there are railroad men to be promoted—never had that in my day.

Q. Following your digression for a moment,

don't you still find that free and easy method on the Florida East Coast, that they have a heavy volume of passenger traffic in the winter time, and engineers come down from the North to run as engineers on the Florida East Coast part of the year—migrate from one road to [116] the other?

- A. The reason for that is-
- Q. Well, tell me whether they do, or not.
- A. They hire all their engineers on the Florida East Coast. Every man who works as an engineer has a seniority date. They are employed because some men in the North would rather work in the South. They do not promote men because they are Negroes. They know they can get a job. The men on that railroad are taken from 33, according to their roster position. They work two and a half months a year and then go back to where they can get a job, or they are out of work entirely. But that is only one railroad in the United States.
- Q. Prior to the Chicago Joint Agreement, was it not rather the general practice for railroads to hire up to 50 per cent. of their engineers as distinguished from promoting firemen?
 - A. No, sir, it was not.
 - Q. Has there ever been a practice of hiring up to 50 per cent. of engineers, as distinguished from promoting firemen?
 - A. There may have been on some railroads in the Southwest or West, and that grew out of the fact that it was in those sections of the country

where they last constructed railroads. Indeed, Mr. Naus, ever since I have been railroading they never hired engineers at all, except when you got the Chicago Joint Agreement in the Southwest during the building of the railroads, men went into the country, like the people who settled it, they left their jobs in the East to go to the West or or West, so as to have jobs when the road opened up. That is how they began to hire engineers, and they didn't have men ready to promote. So, finally, when we got organization there we worked it down to the point where they hired a certain proportion of engineers. But there was no uniform rule on that. [117]

- Q. You think it was confined to such instances as, to take a local one, when the Western Pacific was constructed, having neither firemen nor engineers, it hired either as it pleased?
 - A. They hired men to run the railroad.
- Q. Then, after hiring the men and getting a roster of engineers and firemen, they began to take this route or that route?
 - A. Stabilized the thing, yes.
- Q. By the way, going back to your discussion of the word "equivalent" a while ago, as I understand it, generally it is merely a matter of converting hours back to miles so you can reduce the whole thing to miles? A. That is right.
- Q. A man is either running miles or working hours! A. Yes, sir.

- Q. Suppose he has neither worked hours nor run miles, but puts in a claim for a run around penalty?
- A. Usually a man claiming a run around puts in a claim for a day or a half day.
 - Q. Or 50 miles, or a hundred?
 - A. Well, 50 miles is a half day.
- Q. Explain to his Honor what a "run around" is.
- A. A run around, generally speaking, is a claim by a man who stands first on the working list, generally on the extra list, to be called for a run. Instead of calling him they call somebody else, and under the contract he feels he should have been called, and he claims to have been run around, in that instance, and therefore he puts in a claim for a run around. Usually, under the contracts, that is limited to 50 miles or a half day. On the contracts where he gets a day for it he has to go to the foot of the list and work himself up again.
- Q. In other words, at the particular terminal he stood first out, but somebody made a mistake, and instead of calling him, somebody else was called, so he put in a run around claim? [118]
 - A. That is right.
- Q. And in some instances a man will get 50 miles and still stand first out, and in other instances he will get 100 miles and stand last out?
 - A. Yes.
- Q. But in either instance he runs no miles and works no hours?

 A. That is correct.

Q. But he puts in a run around claim to the railroad, and the railroad pays him for the run around?

A. Sometimes it does and sometimes it does not.

If he proves his claim they do.

Q. A great many of those run around claims are paid consistently, aren't they?

A. Well, there aren't many of them. Railroads are not making mistakes and calling the wrong man every day, but anyway they are paid.

Q. In any event they are paid the equivalent of miles? Λ. It is adjusted as miles, yes.

Q. So you do take days and convert them into miles?

A. The run around is not based on days; it is based on miles.

Q. But he has not worked a single instant on the railroad, or worked a single minute, so far as paid time is concerned? A. Yes.

Q. He is paid dollars on the basis of miles, isn't that it? All that goes into the equivalent, doesn't it?

A. He is paid dollars for the days he runs on the road, whether it is run around or not, but he does not make a claim or adjust the amount of time he is permitted to work on days; he adjusts it on the amount of miles he makes, and the run around is 50 miles or a half day.

Q. But he has not worked.

A. No. There are lots of times a man does not work but he gets paid for it. It all goes into miles.

- Q. Now, I am turning to page 19 of yesterday's p rtial transcript, gentlemen. Yesterday Mr. Richberg put this question to [119] you:
 - "Q. Is it the position of your organization and your contention in this proceeding that the Brotherhood of Locomotive Engineers should be given an exclusive right to contract with the Railroads concerning conditions governing the demotion of engineers and displacement of firemen?
 - "A. It is our position that they should not be given that right."

Now, that concludes the quotation, Mr. Robertson. With that in mind, and noticing that the question is in the conjunctive, I would like to break it down, and I will put this to you: Is it the position of your organization and your contention in this proceeding that the Brotherhood of Locomotive Engineers should be given an exclusive right to contract with the Railroads concerning conditions governing the demotion of engineers?

A. It is our position they should not be given that right.

Mr. Richberg: If the Court please, I just read this question over. It happens the answer may be right in a way. The question that I intended to ask Mr. Robertson, and whether I asked it or whether it was my mistake or the Reporter's, was, whether it was the position of the Firemen's Organization

and their contention that the Brotherhood of Locomotive Firemen should be given an exclusive right to contract concerning the demotion of the engineers, because the next question is: "Is it your position the right should be exercised jointly by the two organizations?" Now, the same thing is true, because it applies to both, but I intended to apply it directly to firemen.

Mr. Naus: I am willing that the transcript should be corrected, but I listened attentively to that question and answer, and I am sure that is the way you asked it. [120]

Mr. Richberg: I may have used the wrong expression. The organizations are very much alike. The result is precisely the same.

Mr. Naus: Q. Now, Mr. Robertson, you say it is the position of the Firemen's Organization, which you head, that under the Railway Labor Act the Brotherhood of Locomotive Engineers do not have the exclusive right with respect to handling provisions as to cutting an engineer off the engineers' working list, is that correct?

A. Well, I have not attempted to interpret the Railway Labor Act, but according to the accepted basis of what is right and what is wrong as between the two organizations, considering the part they play in the industry, we both agreed as a basis of peace between the organizations that neither one of us should control completely and exclusively a situa-

(Testimony of David B. Robertson.) tion which governs the flow of men up and down between engineers and firemen.

- Q. When you say you both agreed, you refer to. the Chicago Joint Agreement of 1913?
- A. Yes, sir, the basis of which is now in almost all the contracts in the country.
- Q. But, Mr. Robertson, you have in mind, have you not that that was terminated in 1927 when the Railway Labor Act was just newly enacted?
- A. Well, I remember when the Labor Act was newly enacted, but it didn't have any bearing on the Chicago Joint Agreement.
- Q. Let me see if I can clear that up. In the question and answer read to you, the question put to you by Mr. Richberg and answered by you from the stand yesterday, were you basing your answer on the Chicago Joint Agreement provision that you thought ought to be still in effect rather than upon your present ideas of the rights of each organization under the Railway Labor Act?
 - A. Which answer to do you mean? [121]
- Q. I will read the question and answer and leave no doubt about it.
 - "Q. Is it the position of your organization and your contention in this proceeding that the Brotherhood of Locomotive Engineers should be given an exclusive right to contract with the railroads concerning conditions governing the demotion of engineers and displacement of firemen?

"A. It is our position they should not be given that right."

A. That is right. I did not base that on the Railway Labor Act, because I felt being in a court, I would not be permitted to interpret the Railway Labor Act. But that is the position both of us have agreed as being a practical, a fair, and an equitable basis of handling this flow of men between the two crafts of engineers and firemen. It is recognized in all the contracts to-day. It was recognized for fourteen years by both of us as being fair, and when the Chicago Joint Agreement was abrogated by the: B. of L. E., the two chief executives agreed it was not the thing to do, and that the best thing for the industry would be for us to try to bring them together again, and we met in 1928 with a committee of officers of the B. of L. E., and our Joint Relations Committee, and we again agreed upon a joint agreement, which was almost the same as the one we had in effect for fourteen years. But the General Chairman of the B. of L. E., Mr. Peterson, came in and refused to accept what everyone, the chief executives and other officers, had agreed to. It would have applied to all railroads in the United States and Canada if they could get authority in their organizations to adopt it. Our organization adopted it as a matter of policy. They refused. We have been in turmoil ever since.

WAR TO BE STORY

- Q. The B. of L. E. in convention and otherwise refused it, did [122] they not?
 - A. I do not know that they refused it.
- Q. You can't produce any agreement that the B. of L. E. has made since the Chicago Joint Agreement was terminated, can you?
 - A. I can produce one their officers agreed to.
- Q. You mean the chief executives, on a tentative basis, but could not get their men in the field to agree to it, isn't that correct?
- A. The chief executive and six of his field officers agreed to a basis that was almost identical with the provisions of the Chicago Joint Agreement, and Mr. Johnson said he would have to call his General Chairmen in to see if he could get that adopted so he would not have any difficulty trying to get it put in effect on the railroads, but they refused to have it adopted.
 - Q. When you speak of Mr. Johnson-
 - A. The chief executive of the B. of L. E.
- Q. He called in his men from the field and they refused to adopt it. Have I now got it clear?
 - A. Yes, sir.
- Q. In that question and answer that I read to you from the transcript, as I understand it, then, you did not base that on the Railway Labor Act; you based it on what you thought would be fair, and you adopted the provisions of the Chicago Joint Agreement as what you thought was a fair basis?

- A. I based it on the position of our Brotherhood. That states the position of our Brotherhood.
 - Q. Yes, but not under the Act.
- A. I didn't try to interpret the Act.
- Q. The next question put by Mr. Richberg and answered by you:
 - "Q. Is it your position that should be exercised jointly by the two organizations?
 - "A. Yes, sir."

Now, with respect to that question and answer, you did not base that answer on the Act, did you?

- A. No, sir.
- Q. You based it on what you thought ought to be a contract arrange- [123] ment between the two organizations, didn't you?
- A. I based it on what I think is the only way it can be handled successfully and maintain peace in this industry, as a practical matter, and as an organization.
- Q. You were expressing it, then, without regard to law or without regard to any existing agreement, but as expressing your thought as the way it ought to be done, is that correct?
- A. I expressed it on the way it is being done by almost every railroad in the country to-day, and as the only method shown to be an efficient way of handling it, the only way contributing to efficiency, safety, and economy in the operation of the railroads.

- Q. Didn't I understand you to say yesterday in answer to Mr. Richberg that there is another railroad besides the Southern Pacific in which a controversy like this is in the course of litigation or controversy?
- A. No, there is no litigation except on the Southern Pacific.
 - Q. Any on the Milwaukee?
 - A. The Milwaukee uses a mileage arrangement,
 - Q. Any on the Great Northern?
 - A. None that I know of.
 - Q. Any controversy there?
- A. None that I know of. There might be a controversy, but I don't know of it. There are controversies going on all the time, have been ever since the Chicago Joint Agreement was abrogated.
- Q. Then, the next question following the other is this:
 - "Q. In default of the possibility of agreement between the two organizations, is it your position that that is a matter within the field and jurisdiction of your organization?

"A. Yes, sir."

Do you mean by that in the absence of any agreement between the two organizations that you, the Firemen's Organization, should [124] have exclusive jurisdiction over the cutting off of engineers from the engineers working list?

A. I mean by that if we can't reach a joint understanding between the two organizations and

the management that will control this flow of men back to take firemen's jobs, and any organization is entitled to have exclusive jurisdiction over that, it ought to be the firemen, because they are the men whose jobs are being taken. But I do not claim that that is the proper way to do it. It ought to be done jointly.

- Q. I merely want to have the record clear as to-what your answers mean, because they were a little confusing yesterday. As I understand, then, you think there ought to be a joint agreement between the two organizations, the Engineers and the Firemen, but so long as there is not one, the Firemen should have the exclusive say on the subject, is that correct?
- A. No, it does not necessarily follow there has to be any agreement between the two organizations on that point in order to have an agreement on that point between the management and the organizations on the railroads. The officers of these organizations may be charged with keeping the organizations apart as a basis of a national policy. That does not prevent the men from entering into an agreement with the management identically the same as we had in the Chicago Joint Agreement, and it is the only peaceful way it can be accomplished, in my opinion.
- Q. You mean a joint schedule on the particular property, or identical schedules, the identical provisions?

 A. Either way.

Q. In the first place, either before, during, or since the Chicago Joint Agreement has there ever been a joint schedule on the Southern Pacific?

A. That I couldn't answer.

Mr. Naus: I think it will be agreed, Mr. Mason, there never [125] was, isn't that the fact?

Mr. Richberg: There never was.

Mr. Mason: Yes, I understand there has never been any joint schedule on the Southern Pacific, Pacific Lines, the ones involved in this case. I believe there is a joint schedule on the El Paso & Southwestern Lines.

Mr. Naus: As to the property in litigation, here, there was never a joint schedule. That is a stipulation, isn't it?

Mr. Mason: I think that is correct.

Mr. Naus: Q. Now, Mr. Robertson, leaving joint schedules out of consideration, joint schedules at any time, and assuming a situation where there are separate schedules, one the Fireman's Schedule, and the other the Engineers' Schedule, and assuming each contains provisions such as Article XLIII in the Firemen's, here, and suppose the two committees, the two General Committees, or the two General Chairmen disagreed in the interpretation of the identical language. How far does your position take you as to who is to have the final say as between the Engineers and the Firemen in interpreting that?

- A. If it is a rule arising under the Engineers' contract and there is a difference of opinion as to what it means, we accept the B. of L. E. Chairman's interpretation; and, conversely, they accept ours if there is a difference of opinion as to what our rule means.
- Q. I know, but taking the provisions that relate to part time men, you have identical language in the two schedules concerning it?
- A. It is in each schedule, and the Firemen's General Chairman and the Engineers' General Chairman disagree between themselves as to the proper interpretation of the same language as between the two.
 - Q. Who do you say should have the final word!
- A. Well, the people that adopted the part-time mileage regulation [126] that you refer to certainly ought to know what they meant when they adopted it, and it seems to me they are the people who ought to say what it meant. The part-time question that you are discussing, if I follow you correctly, is the one we discussed in the National Mediation Board offices, and which the principal officers of the two organizations accepted.
- Q. Assuming a situation where it was never interpreted by those gentlemen whom you mentioned, but of whom I am ignorant, assuming some question of interpretation arises under the schedules and nobody can find an interpretation precedent, and

(Testimony of David B. Robertson.)
under such circumstances the General Chairman of
the Engineers and the General Chairman of the
Firemen disagree, what is your position as to which
one should have the last say on it?

A. I can't change my position on the proposition that the Brotherhood of Locomotive Engineers in a controversy on a rule in their contract have a right to interpret it; conversely, we have the right to interpret our rules if there is any controversy. Rules are so nearly alike, so many have been exactly alike for forty years, everybody on the railroad knows what they mean, and there isn't one time in a thousand that there is any controversy about the thing.

Q. I am afraid even though you may be right, there are lots who will not agree with you. Now, Mr. Robertson, assume a case where there is identical language and the Firemen's Organization was handling an engineer's claim under the Engineer's schedule. How do you go about getting the interpretation of that?

A. Well, as far as the principle of having the case is concerned, I can only answer—I do not know what individual it is on the several hundred railroads in the country—but if that was in the lodge to which I belonged, and I was running engine, and I had a run around claim, I would file it with the management, and [127] if they turned it down or refused to allow it, I would take it to my local lodge, file it with the local committee, and if they

concluded it was meritorious, they would refer it to the local chairman. He would take it up with the local official, and nine times out of ten it would be adjusted, and that is all there would be to it.

- Q. Suppose we assume it was not adjusted and there was a controversy all the way through on the schedule. Then what happens?
- A. There isn't any controversy over the interpretation of the schedule. It is just a question whether the man is entitled or whether he is not. We do not raise any question of interpretation.
- Q. In other words, it is your position, then, Mr. Robertson, any time the Firemen's Organization handles a claim for someone under the Engineers' Schedule, there is never a question of interpretation of the Engineers' Schedule involved, is that correct? A. No, sir, that is not correct.
- Q. Well, is there ever a question of interpreta-
- A. It might be. If there was, we would accept the B. of L. E. Chairman's interpretation.
- Q. How about a situation where the Firemen claimed there was no question of interpretation involved, but the Engineers' Chairman stated you were interpreting it wrongly, it should be interpreted in a different way.
- A. Well, I do not know how the Engineers' Chairman would know anything about the case if there wasn't any controversy about it. We do not

(Testimony of David B. Robertson.)
notify the Chairman of the B. of L. E. when we have cases.

- Q. Assume a case that is known: The Firemen are making a claim under the Engineers' Schedule, and their Chairman makes one interpretation, but the 'Engineers state the Firemen's interpretation [128] is wrong, that the interpretation should be otherwise. Then what?
- A. If we come to a point where there is a difference as to what the contract meant, we would accept the B. of L. E. interpretation of the rules and they would accept ours. That is the principle we follow.
- Q. Now, I think you said that the Firemen hold the engineers' contract on about seventy-five railroads in the United States?
- A. Seventy-three in the United States and two in Canada.
- Q. Let us take the seventy-three in the United States. How many of them are Class 1 railroads?
 - A. Seven.
- Q. Seven class 1 railroads and sixty-six smaller railroads in the United States, making seventy-three?
- A. Thirty-four switching and terminal companies.
 - 'Q. What is that?
- A. There are thirty-four switching and terminal companies, and there are twenty-four Class 2 rail-

roads. The rest of them are broken up between Class 3, and there are three railroads that do not report to the Interstate Commerce Commission. They are lumber companies with possibly two or three dozen men on them, and they come under the National Labor Relations Act.

- Q. State for the benefit of his Honor what a Class I railroad is. State the various classes of railroad so we will know what we are talking about when we talk of a Class 1.
- A. A Class 1 railroad is a railroad—and I do not like to quote the definition, but the Interstate Commerce Commission have set up what constitutes these classifications—Class 1 is a railroad whose gross earnings are more than a million dollars a year, Class 2's are below that, switch and terminal companies are in a class by themselves, regardless of what their earnings are.
- Q. Now, Mr. Robertson, with permission of counsel, I draw attention to the last report of the National Mediation Board, including [129] the report of the National Adjustment Board—this is under the Railway Labor Act—it is the Fifth Annual Report. I invite attention to page 18, which contains Table 10. I draw your attention to the statisfical data there showing the Brotherhood of Locomotive Engineers hold the Engineers' contract on 229,275 miles in the United Staes, and that the Brotherhood of Locomotive Firemen and Enginemen hold the Engineers' contract on 1761 miles

(Testimony of David B. Robertson.)
in the United States. Would you say that is approximately right?

A. Well, I would not want to say that that represents the miles that we hold a contract on. That would depend on how many contracts were filed with the Mediation Board.

Q. They are all required to be filed?

A. Yes, but switch and terminal companies are not measured in miles, and neither are the miscellaneous roads, as far as the contracts we file with the National Mediation Board are concerned. Of course, it represents the mileage of the roads that have mileage, but it does not represent the switch and terminal companies, and there may be more men employed on them than there are on the roads that have this mileage.

- Q. Of the seventy-three railroads that you spoke of in the United States that you hold the Engineers' contract on, you say there are two Class 1 roads?
 - A. Seven Class 1.
 - Q. 'Name them.
- A. I don't know as I can right now, but I would be glad to give them to you to-day sometime.
- Q. I wouldn't want to hold them secret from his Honor.
- A. I will give you the whole list of seventy-five. I can do it at noon.
 - Q. Will you prepare a list of those?
- A. I have them prepared, but I haven't got them with me. It is possible someone here may have it.

Mr. Richberg: I think, your Honor, we have a list of those roads, if you will indulge us.

Mr. Naus: If Counsel are agreeable—I leave it to them to say whether they are or not— may we not stipulate that the rules of judicial notice may be enlarged so that this Court may notice this report, and any other court may notice it without including it in the record?

Mr. Richberg: I assume it has the same value as the letters which were introduced in evidence.

Mr. Naus: I withdraw the suggestion. I merely had this opportunity to present that statistical data but I do not want it used as an instrument to hang irrelevant or incompetent matter upon.

Mr. Richberg: If you wish the witness to answer the question that you just asked him, for the purpose of refreshing his recollection I can furnish a list of the roads, if he can tell from them which is Class 1 roads.

Mr. Naus: I ask that this be marked for identification.

The Court: D.

(The document in question was thereupon marked "Exhibit D for identification.")

(Testimony of David B. Robertson.) EXHIBIT D

For Identification

List Showing Railroads on which

The Brotherhood of Locomotive Firemen and Enginemen

Represents and has jurisdiction over Locomotive Engineers or Motormen.

District No. 1-Western

- 1-Alameda Belt Line
- 2-Alton & Southern
- 3-Arkansas & Louisiana Missouri
- 4-Ashley, Drew & Northern
- 5-California Western R. R. & Navigation
- 6-Chicago, W. Pullman & So.
- 7-Chicago & Western Indiana
- 8-Chicago South Shore & South Bend
- 9-Crossett Lumber Company
- 10—Colorado & Wyoming
- 11-Davenport, Rock Island & N. W.
- 12-East St. Louis Junction
- 13—Fort Worth Belt
- 14-Galveston Wharf
- 15-Illinois Terminal (Steam Division)
- 16-Lake Superior Terminal & Transfer
- 17-Manufacturers' Ry. (St. Louis)
- 18—Minneapolis, Northfield & So. (Minnesota Western Ry.)

19-Minnesota Transfer,

20-Missouri-Arkansas

21-Missouri-Illinois

22-Mt. Hood

23-Outer Harbor Terminal

24—Pacific Coast (Washington)

25-Paris & Mt. Pleasant

26-Pickering Lumber Corporation

27-Port Terminal R. R. Association

28-Pullman

29-Quanah, Acme & Pacific

30-Sierra

31-Texas City Terminal

32-Trona

33-Union Ry. of Memphis

34-Union Terminal (Dallas)

35-Union Terminal (St. Joseph)

36-Verde Tunnel & Smelter Co.

37-Waco; Beaumont, Trinity & Sabine

38-Weverhaeuser Timber Company

39-West Side Lumber Company

District No. 2-Eastern

.1-Akron & Barberton Belt.

2-Algers, Winslow & Western

3-Aliquippa & Southern

4-Benwood & Wheeling Connecting

5—Berlin Mills

6-Buffalo Creek

7-Canton

8-Chicago, Attica & Southern

9-Lakeside & Marblehead

10-Lake Terminal ·

11-Lehigh & New England

12-Manistee & No. Eastern

13-Maryland & Pennsylvania

14 Monongahela Connecting

15-Montour

16.—McKeesport Connecting

17-Newburgh & South Shore

18-Pittsburgh, Allegheny & McKees Rocks

19-Pittsburgh, Lisbon & Western

20-Port Huron & Detroit

21-Union Freight

22--Washington Terminal

District No. 3-Southern

1-Atlanta, Birmingham & Coast

2-Atlanta & St. Andrews Bay

3-Broward County Port Authority

4-Florida East Coast

5-Frankfort & Cincinnati

6-Interstate

7-Meridian & Bigbee River

8-New Orleans Lower Coast

9-Port Utilities Commission

10-Sloss Sheffield (Mary Lee R. R.)

11-Tennessee Coal & Iron

12-Terminal Ry.-Alabama State Docks

District No. 4-Canada

1-New Foundland Government Ry.

2-Algoma Steel

Total 75.

Mr. Naus: Now, using Exhibit D for identification, can you from that name me the Class 1 roads that you spoke of?

A. I don't think I can, Mr. Naus, but I have them classified by classes at the hotel.

Q. Then we will pass it for the moment.

A. For instance, I start out—the Florida East Coast—I can see in a minute that is a class 1 road. The Chicago & Western Indiana is a Class 1. The Missouri-Illinois is a Class 1. I can name some of them but I can't name all. I will be glad to mark them for [131] you and give them to you.

Q. All right. Referring again to this Fifth Annual Report for the Fiscal Year ended June 30, 1939, you will notice here it is stated that the Brotherhood of Firemen and Engineeren hold the Engineers' contract on only four carriers in the United States. Do you mean to say that there are a large number of these seventy-three Engineers' contracts that you hold that you have not filed with the Board?

A. I couldn't say. I don't know where they got their information, but I do know we hold seventyfive contracts for Engineers. I can file those contracts with you if you wish.

Mr. Naus: That is all.

Mr. Richberg: We have no redirect.

The Court: That is all, except I presume you are asking him to return to give that data that you requested?

Mr. Naus: Well, rather than interrupt the trial, I withdraw the suggestion on that.

The Court: You waive that request?

Mr. Naus: Yes, I will waive that.

Mr. Richberg: May it please the Court, I would like to state to counsel that if counsel wants to use subsequently information as to these Class 1 roads, and so forth, we are entirely willing to have the information used, official statistical data.

The Court: He withdrew the request. I do not know whether he wants it.

Mr. Naus: If you can supply it conveniently during the noon hour, then we will reach a determination on that.

Mr. Richberg: If it please your Honor, so far as the intervener is concerned, we rest.

Mr. Mason: We have already rested, [132] Mr. Naus: Call Mr. Laughlin.

GEORGE W. LAUGHLIN,

Called as a witness by the Plaintiff, being first duly sworn by the Clerk of the Court, testified as follows:

Direct Examination

- Mr. Naus: Q. Mr. Laughlin, you are connected with the Brotherhood of Locomotive Engineers, are you? A. Yes, sir.
- Q. In what capacity?
 - A. First Assistant Grand Chief.
- Q. How long have you been with them in that capacity?
- A. Since January 1, 1935, that is, in the present position.
 - Q: Now, you have been a fireman, have you?
 - A. Well, I fired about thirty days.
 - Q. When? A. 1898.
 - Q. Have you been an engineer?
 - A: Yes, sir.
 - Q. Beginning when?
 - A. Ran an engine in active service during 1898 to 1920.
 - Q. You still hold seniority as engineer on some railroads, do you?

 A. Yes, sir.
 - Q. Which? A. Atlantic Coast Line.
 - Q. In 1920 when you stopped running engine, what did your activity become from then on, from 1920 to date?
 - A. General Chairman for the Engineers on the. Atlantic Coast Line Railroad.

(Testimony of George W. Laughlin.)

- Q. From 1920 to when?
- A. Well, June, 1924.
- Q. Then what happened?
- A. I was elected Assistant Grand Chief Engineer at the Convention of 1924.
- Q. By the way, the Engineers have a number of Assistant Grand Chiefs, have they not?
 - A. Nine in number.
- Q. There is the Grand Chief, and then there is the First Assistant, who is now yourself, and then nine others who are assistants, is [133] that correct?
 - A. Yes, that is correct.
- Q. By the way, the Florida East Coast Railroad has been mentioned here. Have you ever worked on that?
 - A. No, sir, I never ran an engine on that line.
- Q. Have you ever had any contact or connection with that Brotherhood? A. Yes, sir.
- Q. Now, you are familiar with the Chicago Joint Agreement in a general way, are you not?
 - A. Yes, sir.
 - Q. You were an engineer when it was adopted?
 - A. Yes. sir.
- Q. And you have been one through the successive revisions or amendments of it? A. Yes, sir,
- -Q. And you are familiar with the history of the termination of it in 1927, are you not?
 - A. Yes, sir.
- Q. Prior to the Chicago Joint Agreement, Mr. Laughlin, was it a universal practice or rule or

(Testimony of George W. Laughlin.)

schedule rule on railroads throughout the United States for engineers to have the right to go back firing and go off the engineers' working list?

- A. So far as my knowledge goes, yes, sir. Engineers were entitled or privileged to return to whatever position they were promoted from to engineers.
- -Q. But take a situation where there was an engineer cut off the list who had not been promoted, but who had been hired?
- A. Until September 4, 1918 hired engineers did not acquire seniority as firemen on any road that I have knowledge of.
- Q. And you have been on many railroad properties throughout the United States in your organization capacity, have you not?
 - A. Quite a number, yes.
 - Q. All over the United States!
 - A. All over the United States.
 - Q. Over a period of years? A. Yes, sir.
- Q. And you have taken up schedule questions, controversies, with [134] many railroad executives on many railroads throughout the United States all over, over a period of years?
 - A. Yes, sir.
- Q. You have studied, examined, and argued upon these railroad schedules with railroad executives, have you not?

 A. In a general way.
- Q. Prior to the Chicago Joint Agreement was it a universal practice for firemen to be promoted to

(Testimony of George W. Laughlin.) engineers, or for railroads to hire engineers, or what was the practice?

A. Well, in the territory where I am better acquainted they hired a great many engineers, or, in fact, the majority of engineers.

Q. Hired, rather than promoted?

A. Yes, but that was because of having colored firemen on some of the Southern roads.

Q. By the way, in your work on the railroad in which you hold seniority, that was located in what part of the country, your particular work?

A. That runs through Virginia, North and South Carolina, and Georgia, Florida and Alabama.

Q. What was the situation up to 1917, say, as to what the practice was with respect to what percentage of engineers railroads could hire as distinguished from the promotion of firemen?

A. Well, I do not know of any designated percentage of engineers that could be hired, nor were there any agreements as to the percentage of menthat would be promoted.

Q. You mean no schedule provision on it?

A. Not so far as I know.

Q. Was it not the practice for railroads to hire up to 50 per cent, as distinguished from promoting firemen prior to 1917?

A. That is on some railroads. I couldn't testify to that of my own knowledge,

Q. Is it or not the fact that there was never a

(Testimony of George W. Laughlin.)
universal practice, that the practice varied very
much throughout different sections of the country?

A. That is my understanding. [135]

Q. There was no such thing as universal practice in the industry, at all, was there?

A. I have no knowledge of universal practice on that question.

Mr. Naus: You may cross-examine.

Mr. Richberg: May it please the Court, Mr. Mason questions whether he will have any questions to ask on cross-examination. Might I ask that we undertake a cross-examination, and if Mr. Mason has any questions to ask subsequently, he might do so?

The Court: Proceed.

Cross Examination

By Mr. Richberg

Mr. Richberg: Q. Mr. Laughlin, referring to the practice prior, to the Chicago Joint Agreement, wasn't it a fact that on many roads the engineers did not have the privilege of being demoted and taking firemen's positions when there was a lack of work as engineers?

A. I don't know of any railroad of my own knowledge, Mr. Richberg, where an engineer promoted from the ranks of firemen were not permitted to return to the ranks of firemen when he no longer was needed by the management as an engineer.

- Q. That, however, was not always under the same conditions, was it, Mr. Laughlin, on all railroads? I mean he might not necessarily be promoted to take the senior fireman's place?
- A. My knowledge is he was entitled to go back in the same relative standing that he enjoyed prior to this promotion.
 - Q. That is, as a general practice, you mean?
 - A. Yes, sir.
- Q. Now, may it not be true that on many roads to which your knowledge does not extend there may have been variations in that practice?
- A. Well, I couldn't testify where my knowledge does not extend.
- Q. What I was endeavoring to bring out is, your knowledge was not universal as to conditions on all railroads prior to the Chicago [136]. Joint Agreement?
- A. Well, generally, my knowledge—I have some knowledge of the general situation.
- Q. When you spoke of their being permitted to return when they came up from the ranks of the firemen, you were distinguishing the case of the hired engineer?

 A. That is right.
- Q. That is, the hired engineer was not included in the class of those who would be permitted to take a fireman's joh?
- A. As far as my knowledge goes, a hired engineer did not hold any rights as a fireman prior to September 4, 1918. Therefore, he could not return

(Testimony of George W. Laughlin.)
to a fireman's position unless the company would
grant him that right as the youngest fireman on .
that seniority district.

- Q. In 1918 an agreement was made, was it not, giving to hired engineers a seniority date?
 - T. Yes.
 - Q. What was that agreement?
- A. An agreement was reached whereby hired or employed engineers would have a date of fireman the same as that of engineer.
- Q. And that was an agreement reached between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen? A. Yes.
 - Q. And then as a result that was written into various contracts?
 - A. That was not adopted by all railroads. It was by some.
- Q. Mr. Laughlin, the complaint which has been filed in this case charges that certain provisions of the Firemen's Contract with the Southern Pacific, in the language of the complaint, "Governing and affecting said craft of engineers in their service as locomotive engineers, including the following," the first of which is Article LI of the Firemen's Agreement. If you will turn to Article LI of the Firemen's Agreement, as to which the charge is made that that is in violation of the rights of the engineer and [137] in violation of the Railway Labor Act as

(Testimony of George W. Laughlin.)
governing and affecting the craft of engineers, I
would like to read that to have it clearly before us:

"The right of any engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded."

Will you state what part of the provision that I have read affects the engineers' craft, and how?

A: Well, in the first place, I do not know by what authority the Firemen's Organization presumes to grant to the Engineers the right that is referred to in the first line, the right of any engineer to have his regularly constituted committee. I do not understand how the Firemen's Organization can grant to the Engineers the right to represent their own men.

Q. Now, may I ask, recognizing the fact, Mr. Laughlin, that many engineers or members of the Firemen's Organization do contend that the Firemen's Organization can't contract with the railroad, that they will represent members of their own organization who happen to be engineers?

A. I contend, Mr. Richberg, that the organization that is designated by that particular craft is the only authority to represent members of that craft.

(Testimony of George W. Laughlin.) men who are working in that craft, on any matters that are covered by schedule provisions.

- Q. Do you mean that any claim which is filed in behalf of an engineer, which goes back to the provisions of the Engineers' Contract, that in such a matter the engineer cannot be represented by any organization except the Brotherhood of Locomotive En- [138] gineers?
- A. My understanding of the Railway Labor Act gives to the craft the exclusive right of representation. I am not speaking as an attorney; that is a layman's interpretation.
- Q. I am asking for your contention. Let us get this perfectly clear, then: Does this mean, then, that in any grievance dispute with the railroad an engineer who is a member of the Firemen's Organization under your contention cannot be represented by the Firemen's Organization but must be represented by the Engineers' Organization?
- A. So far as any schedule rule that was negotiated by the Engineers' representatives with the management, yes.
- Q. That is, if such an engineer has a claim for a certain amount of money, for certain allowance in mileage, or whatever the claim may be, which he claims is due him, in accordance with the contract, the schedule agreement, do you mean under those circumstances it is your position he cannot be represented by the Firemen's Organization, of which he

is a member, but must accept the representation, if any at all, by the Engineers' Organization?

- A. If it becomes a dispute as to the right of the claim, yes. I think he must be represented by the Engineers' representative.
- Q. Well, if the claim is not allowed, then it is a dispute; that is what you mean?
 - A. That is what I mean.
- Q. You mean I might make a claim, but if the railroad disputes it, it immediately becomes a matter that must be handled by the Engineers?
 - A. Yes.

Q. That makes clear, then, your objection to Article LI, and I would like to state it so I won't misstate you. It is simply this: That no member of the Firemen's Organization has a right to be represented in a grievance by his own organization if the grievance involves a claim made under the Engineers' Contract [139] with the railroad.

Mr. Naus: The witness has not claimed-

The Court: He has not answered yet.

Mr. Richberg: Q. Will you say "Yes" or "No"?

A. I didn't answer at all.

The Court: You nodded your head.

^AThe Witness: I answered that question by stating my interpretation or understanding of the Railway Labor Act precluded the Firemen's representative from representing under such circumstances.

Mr. Richberg: Q. Since you insist on referring to the Railway Labor Act—I have no objection to

your referring to it—I will ask you if you will refer to one provision in the Railway Labor Act which is found in Section 2, Paragraph IV, and the sentence which reads as follows:

"The majority of any craft or class of employees shall have the right to determine who, shall be the representative of the craft or class for the purposes of this Act."

Are you referring to that?

- A. . That is one part of it.
- Q. Is there any other place in the Railway Labor Act where you think such right is created?
- A. I have searched the Railway Labor Act trying to find something in there that would give to other than the designated representative, and I have been unable to do so.

The Court: Q. You mean you were unable to find it?

A. Yes, I have been unable to find any provision in the Railway Labor Act that would extend to some outsider the right to represent men under the contract made by the legally designated representatives.

Mr. Richberg: Q. May I call your attention to Section 3 of the Railway Labor Act, Paragraph First, and Clause I, which refers [140] to disputes heard by the National Board of Adjustment, in which appears the following language:

"Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect."—

that is before the Board.

- A. My understanding is an individual can take a case to the Board under the law, or he can select anyone he desires to take it to the Board. I had reference in my answer, if you please, to handling the claim with the railroad official whom the agreement was made with.
- Q. You would concede that if a fireman, a member of the Firemen's Organization, who is an engineer, were prosecuting a claim arising under the Engineers' Schedule before the National Adjustment Board, that he could be represented in that by a member of the Firemen's Organization?
- A. My understanding of the law is that it extends that privilege.
- Q. In other words, it is your claim that during all the lower stages of the controversy he must be represented by the Engineers' Organization, but when he reaches the final Board of Adjustment, he may be represented by the Firemen's Organization?
- A. I stated my understanding of the law was he was privileged under the law to take cases to the National Board. I have been unable to find anything in the Railway Labor Act that would give him the right to handle it with the makers of the agreement.
 - Q. Now, I would like to direct your attention to

Article XLIII, which is set forth in the complaint on page 5, and it is charged that it is a violation of the right of engineers and the Railway Labor Act for the Firemen'to make the agreement with the railroad, which reads as follows:

"Section 1. When, from any cause, it becomes necessary to [141] reduce the number of engineers on the Engineers' Working List on any seniority district, those taken off may, if they so elect; displace any firemen their junior on that seniority district, under the following conditions:"

Without going any further, will you state whether there is anything in that section which you regard as in violation of the rights of the engineers under the Railway Labor Act?

Mr. Naus: Tell him he may look at the schedule.
Mr. Richberg: He has the schedule.

A. I think the question of men returning to the position of firemen when reduced from the working list of engineers, is one that addresses itself to the Firemen's Organization.

Q. So that you would have no complaint of the contract so far as I have read it? ... No.

· Q. Now, the first condition which appears under that reads as follows:

"First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles.

per month; in assigned, pooled or chain-gang freight, or other service paying freight rates are averaging the equivalent of 3200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month."

That is set up as one of the conditions under which an engineer may be demoted and displace a fireman. Is there anything in that agreement or provision which you regard as in violation of the rights of the engineers or the Railway Labor Act?

A. I do not think any part of that has a place in the Firemen's Agreement, because the matter of regulating conditions of the engineers is one that would be handled by the Locomotive Engineers [142] exclusively.

• Q. You take the position that the Firemen's Organization cannot establish those conditions upon which they are willing to have men demoted and take away their jobs?

A. My position is that the Firemen's Organization has a right to say whether men will go back to firing or not. But I do not think they have a right to say how much mileage an engineer will make.

Q. Then, under your contention, Mr. Laughlin, you would concede that the Firemen could make this condition, but they could not require the railroad to enforce it against the Engineers?

- A. The Firemen, in my opinion, can make an agreement with the company provided the company will do so, prohibiting engineers from going back to firing at all when they are cut off, Mr. Richberg.
- Q. Don't you think the Firemen can make an agreement with the company stating the conditions under which they are willing to have, that is, if engineers run, in their judgment, excessive mileage and so throw back an unusual number of men, that under those circumstances they are willing to have them demoted? Do you think the engineers and firemen can't make such an agreement with the railroad?
- A. I do not think the company has any right to make a rule, make an agreement with the Firemen where it pertains to the regulation of engineers.
- Q. In other words, the Firemen, as a matter of fact, can't make, according to your opinion, any condition on the demotion of the engineers except they can provide with the railroad that when engineers are out of work, they can be demoted or they can't be, is that your position?
- A. My idea is, Mr. Richberg, the Engineers' Committee or Organization is the ones to decide when engineers will be removed from their working list The Firemen's [143] Organization is the one to agree with the company when they will go back to firing, if and when they go back to firing.
- Q. Now, as a practical railroad man of long experience. Mr. Laughlin, you know as a matter of

fact, do you not, that one of the most important considerations moving firemen to permit their senior firemen to be displaced is that engineers shall not run what they regard as excessive mileage and so throw back an unnecessary number of engineers on the Firemen's list? You know that is a matter of great inferest to firemen, don't you?

- A. That is a matter of interest to the Locomotive Engineers' Organization as to how much mileage an engineer will be permitted to make.
- Q. Don't you think it is a matter of very great interest to the Firemen as to whether they shall have a large number of men thrown back, displacing firemen, when, as a matter of fact, if the engineers were running a reasonable amount they would have fewer men displaced? That is a matter of interest to the Firemen, isn't it?
- A. Regardless of my thought in the matter, I am making a statement here as to the rights, in my opinion, of one organization to make rules to govern the craft of another organization.
- Q. Then you do not agree, Mr. Laughlin, with the statement which I understood counsel for the plaintiff made here, following my original statement in this case, to the effect that it was within the rights of the Firemen's Organization to set up by contract the conditions under which they would permit demoted engineers to displace firemen?
 - A. I was trying to answer your questions, Mr.

(Testimony of George W. Laughlin.)
Richberg, without regard to statements made by others.

Mr. Richberg: I think that is all.

The Court: Q. Do I understand, then, your attitude is this: [144] Just as soon as an engineer is demoted or is allowed to take a position of fireman, he is to be treated as a fireman?

- A. No, sir. I do not mean that. I mean that is a right that the Committees representing the Firemen and the Railroad Management have without any question coming from any other organization.
- Q. In other words, if he wants to make any claim, a man who has been demoted, he must make it, to the Firemen's organization because he was acting as a fireman?

 A. Yes, sir.
 - Q. That is your thought?
 - A. That is my thought.

Cross Examination

By Mr. Mason:

Mr. Mason: Q. Mr. Laughlin, bearing further on some of the questions asked you by Mr. Richberg, there are a number of men, members of your organization, who from time to time go back firing, do they not?

A. A good many—you mean members of the Brotherhood of Locomotive Engineers?

Q. Yes.

A. Yes, they go back to firing in accordance with their seniority as firemen.

- Q. They go back under the provisions of rules similar to Article XLIII of the Firemen's Agreement on the Southern Pacific and Article XXXII, Section 6, of the Engineers' Agreement on the Southern Pacific. Now, when a fireman member, when a member of your organization, B. of L. E., serves as a fireman, there may accuse grievances for run arounds, or some other right arising, as to which you will make a claim against the company, may he not?

 A. That can happen, yes.
 - Q. He may be even subjected to discipline?
 - A. As a fireman? .
 - Q. As a fireman. A. Yes.
- Q. There will have to be some handling of the claim with the management, will there not?
 - A. Yes.
- Q. And if the case is one involving discipline, for example, it [145] may involve an interpretation of the investigation rule, may it not?

 A. Yes.
- Q. In that case who handles the claim with the management?
- Λ_i I think the Firemen's representative should handle it.
- Q. Would you say then that the fireman member of your organization should present his claim through the Local Chairman of the Firemen?
- A. I think if the B. of L. E. man is back firing he should come under all provisions of the Firemen's Contract and be represented by that organization.

- Q. Would you give Mr. Peterson, the General Chairman, the right to represent your fireman member if the claim, for example, was that the investigation rule had not been complied with?
- A. If my interpretation of the law is right, he doesn't have that right.
- Q. But suppose management and the man handling the claim, whether it is Mr. Peterson or the General Chairman of the Firemen, are not able to agree, and the man is still dissatisfied, so that the case is one for handling by the National Adjustment Board under Section 3. Then who handles the case with the National Adjustment Board concerning this claim?
- A. As I understand the law, the individual has the right to employ an attorney, if he desires to, or employ anyone he desires to, before the Rail, road Adjustment Board.
 - Q. And he could then be represented by the General Chairman of his organization to which he pays his dues in the handling of his case before the Adjustment Board?
 - A. In my opinion he could be represented by anyone of his own choosing.
 - Q. Do I understand you correctly to say that the Firemen have the right to say whether a man who has been promoted and who is serving as an engineer, but who is cut off because there is not [146] sufficient work for engineers, may return to service as a fireman?

- A. I think that is a question that addresses itself to the railroad management and the Firemen's Organization.
- Q. Assuming that the Firemen have the right to say whether he may return, you agree with me that they have the right to say whether he may revert to firing service?
- A. I think they have a right to adopt a uniform rule as to how they will go back to firing.
- Q. They have a right also, do they not, to say whether he may displace a fireman who is his junior, and has seniority as a fireman?
- A. Has control over the entire matter of him going back to fireman.
- Q. They may attach, for example, conditions to that reversion, may they not? They may, for example, attach a condition that he must be cut off the list for at least ten days before he can make displacement, may they not?
- A. I said they had complete control over the conditions under which they returned to firing positions.
- Q. They have complete control over the conditions under which such a demoted man may make displacement, then, is that correct?
 - A. That is my understanding, yes.
- Q. Is there anything, then, to prevent the Firemen's Organization from placing in their agreement a condition that a demoted man may not be allowed to displace as a fireman, may not be allowed to serve

(Testimony of George W. Laughlin.)
as a fireman unless the average earnings of the
engineer with which he is classed has fallen below
a certain stipulated mileage equivalent?

- A. I do not think it has any right to say how much an engineer should earn before he is cut off the working list by the Engineers' Organization.
 - Q. That is not the question I asked you.
 - A. Maybe I didn't [147] understand you.
 - Q. I agree with you that the Firemen may not say how many miles an engineer may earn before he is cut off the working list of engineers, but is it not correct that they may say how many miles he may earn as an engineer, or how many miles the average of his class of engineers may earn before he is restored to the list of firemen?
 - A. I don't know that I can make my answer any plainer than to say that that is a question that addresses itself to the management and the Firemen's Organization, to provide or stipulate under what conditions an engineer who has been cut off of the board by the Engineers' Committee may return to the position of firing.
 - Q. Then you agree with me, do you not, Mr. Laughlin, that the cutting off of an engineer is one act? A. That is right.
 - Q. And that is accomplished under the Engineers Agreement, is it not?
 - A. That is right.
 - Q. And the restoration of this cut off man to the Firemen's List with right of displacement at

(Testimony of George W. Laughlin.) the top of the list, is entirely a separate act, which is governed by the Firemen's Agreement?

- A. Absolutely.
- Q. And the conditions which may attach themselves to the cutting off of the man, and are expressed in the Engineers' Agreement, may or may not be the same as the conditions which attach themselves to the restoration of the man to the Fireman's List, and which are expressed in the Fireman's Agreement?
- A. I feel that the Engineers' Committee has a right to make any agreement with the management that they may, regarding the removing from the working list of engineers.

The Court: Q. And restoration also, I presume?

A. Restoration to the Engineers' List, yes, sir.

[148]

- Mr. Mason: Q. Do the Engineers' Committee have any right to say to the management what the conditions shall be under which a cut off engineer shall be qualified to displace at the head of the Firemen's List, or anywhere else on that list?
 - A. I don't think so.
 - Q. Now, I think you said that you could not recall any uniform practice as to the rule or custom with regard to the hiring as distinguished from the promotion of men to serve as engineers, is that correct?
 - A. I do not know that I said just as you have stated, Mr. Mason.

Q. I do not intend to make you recall exactly what your testimony was in that regard.

Mr. Naus: What particular time are you referring to, Mr. Mason?

Mr. Mason: Prior to 1914, the Chicago Joint Agreement.

- Q. You are not familiar, are you, with the grievance between the Southern Pacific and the Brotherhood of Locomotive Engineers in effect in 1903 and at subsequent dates prior to 1914?
- A. I read those agreements, and my understanding is that an engineer cut off the working list back in those days did not have the right to come back firing, but they could go from one seniority district to another where the service of the company required more engineers.
- Q. I am not speaking of demotion now; I am speaking of hiring as distinguished from promotion.
- A. As I understand, you had an agreement to hire 50 per cent, of engineers on the Southern Pacific, I think I read that in some agreement.
- Q. I want to refer you to the agreement of January 1, 1903, and ask you if that does not include on page 22 a/list of special [149] requests that were granted, one of which is, "We ask that not less than 50 per cent, of engineers be hired when practicable,"
- A. I understand that is in the agreement. I read that, yes.

Mr. Naus: What rule were you reading from?

Mr. Mason: I was reading from page-

Mr. Naus: Rule number.

Mr. Mason: It is not a rule number. It is under the heading of "Special requests having been granted."

- Q. Now, following that, Mr. Laughlin, I will show you the agreement of March 1, 1908, which was between the Southern Pacific and the Brother-hood of Locomotive Engineers, and refer you to Article XXXI, Section 6, and ask you if that does not read. "It is understood that not less than 50 per cent. of engineers be hired if available."
- A. Well, I believe I said, Mr. Mason, that I read this in your schedule, but your attention is directed to the fact that this agreement was made before there was any Railway Labor Act, or before there was any Chicago Joint Agreement.
 - Q. Yes, that is correct:
- A. And there were no reasons why Engineers of Firement could not make any kind of agreement, even though they transgressed on the other fellow, if the management would go along with them:
- Q. Wasn't there some provision carried forward in the agreement of February 20, 1911, in Article XXXII. Section 6—
- A. There wasn't any Railway Labor Act or any Chicago Joint Agreement even in that year.
 - Q. That is correct.

- A. The same condition prevailed.
- Q. Generally, that provision as to the hiring of not less than 50 per cent. of engineers if available continued until 1917, did it not?

 A. 1913.
 - Q 1913, was it? A. That is right. [150]
- Q. Now, in 1914 there was an agreement between the Southern Pacific and the Brotherhood of Locomotive, Engineers, a printed copy of which I show you, and that modified the other rule so as to provide something similar to the present rule, did it not? I am referring to Article——:
 - A. Well, they adopted the provisions—
- Q. Article XXXII, Section 6(a) of that agreement adopted the provisions of the Chicago Joint Working Agreement, did it not?
- A. No, they adopted a rule that was similar to Chicago, or perhaps identical with it, but they never did adopt the Chicago Joint Agreement in its entirety on the Southern Pacific Railroad, so far as I know.
- Q. And that is the rule that provides for the hiring of engineers where firemen, are required to fire less than three years?

 A. That is right.
 - Q. And then in proportions up to
 - A. Eight years.
- Q. Where all engineers who are promoted as fixemen are required to fire eight years or more?
 - · A. Yes.

- Q. That is the present provision in the agreement of the B. of L. E.?
 - A. I couldn't say. Perhaps it is.

Mr. Mason: I think that is all. Thank you.

Mr. Naus: That is all. I handed to counsel earlier this morning, if the Court please, copies of an exchange of letters that I now offer in evidence.

The Court: If there is no objection they will be received.

Mr. Mason: No objection.

Mr. Richberg: No objection.

Mr. Mason: Will the two be received as one exhibit?

Mr. Naus: Yes, it is an exchange of letters, and I think it ought to be one exhibit.

The Court: No. 10. [151]

(The documents in question were thereupon or received in evidence and marked "Exhibit 10."):

EXHIBIT No. 10

· Engineers' Compilation Page 343

FIREMEN'S ARTICLE 37 ENGINEERS' ARTICLE 30—SECTION 5

(Org. File E-5082-30-5; (Co. File E&F 148-523 (Org. File E-4083-32-6(m); (Co. Files E&F 111-97) "60-120)

February 28, 1936.

Mr A. J. Hancock, Asst. General Manager, Southern Pacific Company (Pacific Lines), San Francisco, Calif.

Cases 3 and 8 Conference Docket, January 16, 1936.

Dear Sir:

We have for acknowledgment your letter February 27, 1936, reading:

"Referring to yours 20th, file E-5082-30-5, concerning claim for run-around in favor of Engineer A. M. Fisk, Coast Division.

As understood in conference this morning, this case will be disposed of by adopting the following:

'It Is Agreed that when it is necessary to use demoted or hired engineers as the result of the engineers' extra board being exhausted, the senior available engineer will be used, and the fact that he may have earned his maximum mileage as a fireman will not prevent him from being used as an engineer until such time as he has earned the equivalent of the maximum mileage for engineers in the combined service.'

Please advise of your acceptance to complete the record.

It is understood that above settlement will also serve to close Case No. 8 of B. L. E. Grand Office Conference Docket of January 16th, 1936."

The foregoing is in accordance with understanding reached in conference and is accepted.

Yours very truly,

A. O. SMITH By POP

> Asst. Grand Chief Engineer, BLE.

P. O. PETERSON, General Chairman, BLE.

Engineers' Report Page 2097

(Copy)

Southern Pacific Company 65 Market St., San Francisco

E&F 148-523

A. J. Hancock,

Assistant General Manager

February 27th, 1936

Mr. A. O. Smith, Asst. Grand Chf. Engr., Brotherhood of Locomotive Engineers, Pacific Building, San Francisco, California.

Mr. P. O. Peterson, Gen. Chrmn., Brotherhood of Locomotive Engineers, Pacific Building, San Francisco, California.

Gentlemen:

Referring to yours 20th, file E-5082-30-5, concerning claim for runaround in favor of Engineer A. M. Fisk, Coast Division.

As understood in conference this morning, this case will be disposed of by adopting the following:

"It Is Agreed that when it is necessary to use demoted or hired engineers as the result of the engineers extra board being exhausted, the senior available engineer will be used, and the fact that he may have earned his maximum mileage as a fireman will not prevent him from being used as an engineer until such time as he has earned the equivalent of the maximum mileage for engineers in the combined service."

Please advise of your acceptance to complete the record.

It is understood that above settlement will also serve to close Case No. 8 of B. L. E. Grand Office Conference Docket of January 16th, 1936.

Yours very truly,

(Signed) A. J. HANCOCK

[Endorsed]: Filed 10/11/40.

Mr. Naus: I provide counsel with copies of another letter that I now offer, and I ask that the ruling wait until counsel has had an opportunity to read it. I would have given it to them earlier, but I did not have it available to me.

Mr. Richberg: If the Court please, not having seen this letter before, I had to read it hastily, but, as I see, it is a letter from one of the officials of the Southern Pacific to Chairman Moffitt, of the Firemen's organization, in regard to the disposition of certain individual claims which have been filed. It is precisely in that classification of material which I thought at the outset might be offered, individual cases which have nothing to do with the general rule or the construction of the Railway Labor Act. It concerns the disposition of a case between an official of the railroad and an official of

the organization. We could start with that and show volumes of what went on day by day. It would be an interminable matter, and it seems to me this opens the field of individual grievance cases.

The Court: Do you desire to object to it?

Mr. Richberg: I would object to the introduc-

The Court: You know that without any further investigation?

Mr. Richberg: I can see that by the type of letter it is.

Mr. Naus: I will ask that it be marked for identification for the moment, pending the ruling.

The Court: E.

(The document in question was thereupon marked as "Exhibit E for identification.")

Mr. Mason: May I ask, Mr. Naus, will you explain the purpose of the offer of Exhibit E for identification? [152]

Mr. Naus: I have no objection. I simply want to illustrate the practice. There is a letter of June 29, 1939. That is shortly before the complaint in this case was filed, and it shows the practice as between the railroad, who wrote the letter, and the fireman who received it, and correspondence concerning a claim made by the Firemen's Organization under the Engineers' Schedule, and the practice showing that they would go ahead and dispose of that claim under the Engineers' Schedule, but without regard to what had been agreed upon in

the Eng neers' Schedule. It reads, "Such firemen entitled-"

Mr. Mason: That is the Firemen's Agreement? Mr. Naus: Yes, but you will find later on in the next paragraph down here, after disposing of the Firemen's claim, which is related to another one, without regard to the Firemen's Schedule, it then disposes of a claim that was made under the Engineers' Schedule and settled without regard to what the Engineers' Schedule provided—that that has been the practice.

I now offer in evidence, having explained my purpose at the request of counsel, the document marked Exhibit E for identification.

Mr. Richberg: Might I ask the Court to reserve the ruling on that matter for this reason: if this is merely a typical example of handling certain claims, we might have no objection to it. It opens up the door as to that type of evidence.

The Court: In other words, you want an opportunity to look into the matter?

Mr. Richberg: Yes.

Mr. Naus: I might say counsel for the railroad is here. They certainly should be well informed of what the practice is, and, if I am not mistaken, they could produce a witness to show I [153] am wrong about it. I understand that letter is illustrative of the practice.

Mr. Mason: If your Honor please, I would have no objection to the reception in evidence of that letter, so far as the Defendant is concerned, the Exhibit marked E for identification, if it can be understood that the exhibit marked Λ for identification is likewise received in evidence.

Mr. Naus: I will engage in no horse trading, Mr. Mason.

Mr. Mason: It is no horse trade. The two are definitely related one to the other, and Exhibit E for identification has no pertinency, not understandable, even, unless Exhibit A for identification is part of the record.

I will say this: Exhibit E for identification is the disposition of a claim made by the Firemen's Organization of a claim of an engineer member. The disposition of the fireman's claim, of course, is not material, and that disposition will be found in the paragraph at the foot of sheet 1, commencing with the words "Claim of Engineer Martin," and concluding at the top of the next page under the provisions of Article XI, Engineers' Agreement.

Now, without referring to the text of the letter, which will show the disposition was in line precisely with the recommendations which were treated as having the force of law, made by the President's Emergency Board, and embodied on pages 8 and 9, and in the preceding matter of Exhibit A for identification, Exhibit E for identification is not understandable. At least that is our position. I know about this letter, and I know about the Emergency Board report. I have seen them before.

The Court: You do not stipulate, then-

Mr. Mason: It seems to me one without the other means the [154] record is defective, that is all. I am perfectly willing to have the letter go in evidence if Exhibit A for identification likewise goes in, so the record is complete; otherwise, they are meaningless.

Mr. Weisell: Your Honor, may I add just one statement. Counsel refers to the report of the Emergency Board. I call attention to the fact that it violates the rule, inasmuch as the Engineers' rule says that all controversies shall be handled in accordance with the provisions of the Engineers' Schedule. That is similar phraseology. Here it is without reference to the schedule. It certainly is relevant to the schedule without reference to what the Emergency Board has done.

The Court: The Court will abide the further showing of Mr. Richberg. Let us proceed.

Mr. Weisell: I didn't hear your Honor. .

The Court: I said, it will abide the further showing of Mr. Richberg. You said you wanted time to look into the matter before you made further objection?

Mr. Richberg: Yes.

Mr. Naus: If the Court please, I will say I am prepared to rest for the plaintiff until this is disposed of. Of course, I can't formally rest until the matter is concluded. I announce now I will rest when that is acted upon by counsel, and I act accordingly.

The Court: That closes the case, does it?

Mr. Naus: So far as the plaintiff is concerned.

Mr. Richberg: If your Honor please, regardless of the pertinence of this particular document, and without following up the statement of Mr. Mason, with which I agree, and that is it should be considered in connection with the report of the Emergency Board, [155] I am perfectly willing, if this is the last document, so as not to press it, to withdraw the objection if he is going to close his case.

The Court: If you have no objection, Exhibit E for identification will be received as No. 11.

(Exhibit E for identification was thereupon received in evidence and marked Exhibit 11.)

EXHIBIT No. 11

(Copy)

Southern Pacific Company 65 Market St., San Francisco

> Org. file F-5042-(1)-28 Co. "E&F 195-195

Mr. C. W. Moffitt,
General Chairman, BLF&E,
Pacific Building,
San Francisco, California.
Dear Sir:

Please refer t

Please refer to my letter April 6, 1939, file E&F 195-195, providing for settlement of the claim of Engineer R. B. Marden and various firemen, West-

ern Division, for additional compensation on or between the dates of February 1, 1933 and July 24, 1937, in connection with service performed by them on Yard Assignments Y-145, 149, 150, 659, 747, 748, 749 and 754 at Richmond.

The first two paragraphs appearing on page 2 of said letter are as follows:

"Claim of Engineer Marden: Check will be made for the period February 1, 1933 to April 30, 1936, to determine the amount due Mr. Marden during that period, on basis that engines involved should have been assigned to commence work at 8:00 AM, and without prejudice or reference to the provisions of Engineers' Agreement, this claim will be disposed of by allowing him one-half of the amount thus developed; likewise, similar check will be made for the period April 30, 1936 to July 25, 1937, and the total amount thus developed will be allowed Mr. Marden under the provisions of Article 11. Engineers' Agreement.

In regard to claims of Firemen: As agreed in conference, check will be made for the periods hereinbefore shown, to develop the amount of money due each fireman who performed service on the engines involved. Each such fireman entitled to payment, will, without prejudice or reference to the provisions of Firemen's Agreement, then be allowed for the period February 1, 1933 to April 30, 1936, one-half of the amount

thus developed. For the period April 30, 1936 to August 13, 1937, each fireman entitled to payment will be allowed the full amount thus developed under the provisions of Article 28, Firemen's Agreement."

As result of our further discussion of this case, we desire to amend those two paragraphs to read as follows:

Claim of Engineer Marden: Check will be made for the period February 1, 1933 to August 2, 1935, to determine the amount due Mr. Marden during that period, on basis that engines involved should have been assigned to commence work at 8:00 AM and without prejudice or reference to the provisions of Engineers' Agreement, this claim will be disposed of by allowing him one-half of the amount thus developed: likewise, similar check will be made for the period August 2, 1935 to July 25, 1937, and the total amount thus developed will be allowed Mr. Marden under the provisions of Article 11, Engineers' Agreement.

In regard to claims of Firemen: As agreed in conference, check will be made for the periods bereinbefore shown, to develop the amount of money due each fireman who performed service on the engines involved. Each such fireman entitled to payment will, without prejudice or reference to the provisions of Firemen's Agreement, then be allowed for the

period February 1, 1933 to August 2, 1935, one-half of the amount thus developed. For the period August 2, 1935 to August 13, 1937, each fireman entitled to payment will be allowed the full amount thus developed under the provisions of Article 28, Firemen's Agreement."

Adjustment will be made in accordance with said amendment.

Yours truly,

(Signed) R. E. BEACH

ec-Mr. P. O. Peterson, BLE.

[Endorsed]: Filed 10/11/41.

Mr. Naus: The plaintiff rests.

Mr. Mason: Mr. Naus, in order to save any further testimony, I wonder if you will stipulate with the defendant, and I am offering this stipulation also to Counsel for the Intervener, that the Brotherhood of Locomotive Engineers, through General Chairman Peterson, customarily and frequently handles and disposes of claims of the firemen members of the Brotherhood of Locomotive Engineers on a compromise basis and without prejudice or reference to any rule of the Firemen's Agreement which may be involved?

Mr. Naus: I regret that I cannot stipulate with

you, and I would invite if not challenge you to prove it.

Mr. Richberg: If it please the Court, we have no desire to offer any further evidence.

The Court: So you rest?

Mr. Richberg: We rest.

Mr. Mason: I have no desire to take further time of the Court. We won't proceed any further.

The Court: The defendant rests.

Mr. Naus: What is the wish of Court and Counsel with respect to presenting the matter?

The Court: I think it is preferable, as far as the Court is concerned; if you brief this matter.

Mr. Naus: I quite agree with the Court. That would be the [156] best approach.

The Court: However, I do not like to force my views. I think there is no sense in doing both.

Mr. Richberg: May I make this suggestion, if the Court please: I would be very glad to submit the matter entirely on briefs except for this extraordinary situation: I have not been able to ascertain yet what the conditions of the plaintiff are I do not know.

The Court: Wouldn't you ascertain that in his opening brief?

Mr. Richberg: The point about it is this if your Honor please: In the preparation of briefs, it is presumable the plaintiff will have to file an opening brief. I think it is reasonable for me to point out that I would not remain here for that. Then counsel on our side of the case are going to be separated

by the entire country. It would be more helpful if we could know before I left what the contentions of the plaintiff are.

Mr. Naus: If your Honor please, I would suggest this: Mr. Richberg and Mr. Prince will be separated. Mr. Weisell and I also will be, but I will have the advantage of a conference with him before he leaves. Now, I do not know of any life-and-death rush about the time of submitting this after briefs. I am perfectly willing that the Court be generous with counsel in the allowance of time, so there may be opportunity for communication back and forth through the mail. After I have a conference with Mr. Weisell, after the case concludes here, we will agree on the form of the brief, the contents of it: I would have no objection then if we went back up to the hotel now and sat down with Mr. Prince and Mr. Richberg and indicated to them generally our position. I quite agree with the Court that the Court's time should not be taken up with the two forms of argument. [157]

The Court: It is most extraordinary if a counsel makes his argument and then you are not prepared to meet it, but you answer it, and you expect me to remember that when the briefs are filed. Now, if you just try to inform each other of what you want to do, you might get together and argue it, but if you try to convince me about your version of the case. I won't do it until I see the briefs. After all, what I want to see is the authorities. Argument is only persuasive: It is nice for a jury. But you wouldn't

want to persuade me to decide something adverse to the law.

Mr. Richberg: May I put it this way, if the Court please: I feel, in view of, I might say, the complete confusion as to what the plaintiff's argument is on this subject, that the Court might be in equal confusion, and I think, frankly, in the thirtyfive years I have been practicing I have never been in a case where I came to the end of the case without knowing what the plaintiff's contentions were. I heard the statement made here the plaintiff has waived all the contentions he has named, and I do not understand what the contentions are. Now, my only thought was that possibly in summing up the matter before your Honor we both could get a clearer understanding of what the issues were and it might be helpful to the Court, but I do not want to take the time of the court needlessly when the Court has to sit down and read some briefs.

The Court: After all, when this matter is submitted and comes before me, perhaps two or three months later, and I have listened to a short argument here—I presume you will not take over an hour to a side, maybe less than that,—I listen to it, and what value will it be when I finally sit down to look at the briefs and look at the cases? The only way it would be of any [158] value, would be to have if taken down and read it again in the light of your work, because this matter comes down to a pretty close point, apparently.

I regret these two great Brotherhoods could not have cotten together and adjusted it themselves. That is a way I feel about it, I think it is important enough for them to do so. Both of them are really following the same vocation, only they are practicing the law of seniority, and it seems regrettable that there should not be an understanding that would be fair to both engineers and firemen. However, that is not my business, of course, to suggest that, I suppose, because I am here merely to determine the issues presented. I regret that you found it necessary to apply to a court.

Now, I suppose time for argument can be given you, but do you really think it would benefit, excepting you will find out Mr. Naus', the Engineers' and Mr. Weisell's contentions in advance of their brief? Of course, certainly they will have to put something in their brief.

Mr. Naus: That is correct.

The Court: I do not want to appear as if I do not want to listen to counsel. I refuse to be put in that position. But I will say this: You have asked me and Phaye replied. Now, you gentlemen say what you want to do.

Mr. Naus: I fully agree with your Honor that we should not have two forms of argument. Of the two I vastly prefer the brief.

The Court: There is a permanent record, and if you do not put it in there it is your fault. If you do put it in there I see it, and if I err, I err because I do not accept it.

Mr. Naus: That is it. To be fair to the Court and to be fair to ourselves, I think we should have one argument, and I [159] feel that the written briefs is the superior form.

Mr. Richberg: I am entirely agreeable that we withdraw the request for oral argument. I think Mr. Mason feels the same way.

Mr. Mason: Yes, I am agreeable that the ease be disposed of on briefs.

Mr. Naus: If the Court please, I would suggest, in view of the attorneys involved, that the plaintiff be given 30 or 40 days to open, and a corresponding time for the other sides for reply. If they want less than that, I will agree on less, If they want to make it 20 and 20, I will do that. I am merely making a suggestion.

The Court: 30, 30 and 20?

Mr. Richberg: That will be satisfactory, if the Court feels that is desirable.

The Court: Do you feel your work would be rushed? It seems to me a proper procedure would be to permit you to have a further showing if you need it. I do not know about the field that you have here. But once you have defined it, I think it is a very limited one. I wish there were more law on it. When you tell me there was only one case, I wish there were a great many, that I might be guided.

Mr. Richberg: Your Honor has allowed 30 days? The Court: 30, 30 and 10.

Mr. Naus: I thought you said 20. I will have to correspond—

The Court: Pardon me. The time will start from the filing of the transcript in the record.

Mr. Naus: Then the Reporter may file the transcript in the Clerk's Office in San Francisco and notify me of the date of filing?

The Court: I think that is fair. Sometimes the transcript is slow in being filed. All right, instead of 10, it will be 20. [160]

Mr. Richberg: If your Honor please, would you care to make any suggestions, or leave it entirely to the wisdom of counsel as to the length of briefs?

The Court: Of course, I will say this. I would rather leave that to you as to what you think of the matter. Of course, if you go too far afield it is not going to help me.

Mr. Naus: I prefer to have it left to counsel.

The Court: I would rather leave that to your judgment. Of course, you must know sometimes a court gets very much worn by briefs that are too far afield. I have had some briefs in which I couldn't see the pertinency of some of the matter. But, of course, that does not appear here to-day. I don't think it will happen.

Mr. Richberg: May I ask, if the Court please, since we have three parties involved here, I assume that by the order the briefs, as far as the defendant and the intervener are concerned, be filed at the same time?

The Court: Well, I took that for granted. Apparently they will be somewhat the same. You probably, both of you, are really taking a stand against.

the plaintiff, and as such I was making the second 30 days applicable to both. I wasn't making it one brief; I was making it separate briefs on the part of each.

Mr. Naus: The order they got for intervention had them intervening as a defendant, a most unusual form of intervention, but they lined themselves up as defendants.

The Court: I think each one is entitled to present a brief of their own. Naturally, counsel for the plaintiff would probably have to put in two briefs to answer the two.

Mr. Naus: I can answer their two briefs in one reply, I [161.] presume.

The Court: I presume that concludes the case until it is submitted. I think Mr. Mason and Mr. Naus are familiar with the rule that you must make a formal submission after the briefs are filed before the Court takes up the matter.

Mr. Naus: I know that.

The Court: I presume Mr. Prince would know that, too. But I suggest to other counsel that if the others do not act, you will have to write formally submitting the matter.

Mr. Naus: Mr. Prince and I respectively will act for the Eastern counsel in the matter.

Mr. Richberg:, If the Court please, I think the record is still open. I wish to make a formal motion for judgment on the pleadings, and formal motion for judgment on the evidence. I would like to have those motions entered, if I may.

The Court: They will be entered.

Mr. Richberg: I think also we should follow up the identification, in order to preserve the record, and move for the admission of the exhibits which were offered and which were identified.

The Court: I presume all of those exhibits that were marked for identification, except the one that has just been received, were bad.

Mr. Richberg: Yes. We have on the record an objection.

The Court: As I take it, no one has taken the attitude that they wished to withdraw those objections.

Mr. Naus: No.

The Court: The ruling will stand. I do not suppose you need any exceptions or objections other than those that you stated when the trial was going on.

Mr. Richberg: We want to be sure the matter is in the re- [162] cord.

Mr. Naus: Might I say, for two reasons, one the New Rules adopted in September, 1938, and the other the fact that this is not the ordinary type of case, but this is a suit for declaration, I do not know what a motion for judgment is, before your. Honor decides the legal relation of the parties. It won't be a judgment one way or the other; it is a declaration.

The Court: I understand that, Mr. Naus, but I do not object to anyone making these motions. I am

not shutting counsel off from making what he feels is necessary in the case.

Mr. Prince: On the same line, your Honor, in connection with the matter of procedure, we are interested in seeing we do not fall into any pitfalls; as I understand the practice, we will not formally submit this case until the briefs are in?

The Court: That is correct. You have announced that the taking of testimony is over on the part of all of you, and you have agreed that the only sort of presentation you have got to make is that of briefing, and when that is done it is complete. But before it is actually before the Court to be determined, our rules require that you make a formal submission announcing that the matter of the briefs has either been consummated or the time has elapsed so that counsel is debarred further, unless he gets an order, from filing further briefs. For instance, suppose the first brief were filed, and counsel for the defense and intervener did not file in the next . thirty days. Then after the thirty-first day Mr. Naus could come in and submit it, because you have apparently abandoned the right to file it. The only way you could enlarge that would be by a court order

Mr. Naus: I will say, if the Court please, I am sure everybody will get their brief, in, within the original or enlarged [163] time, but I will undertake, when the briefs are in, to see that an exparte motion is made in the usual way for submission.

The Court: The only reason I call that to your attention is that we have had one or two unfortu-

nate experiences—I should say I have had, I know Judge St. Sure has, and maybe the other judges. Six months after the filing of the briefs someone wants to know why the Judge is not deciding the case, and when the matter is looked up, sure enough, the case was never submitted, because of the neglect of counsel in not submitting it. We want to decide cases as soon as submitted, to keep the work up. We do not go over the record every so often to see if all the briefs are in.

Mr. Naus: Apropos of that, your Honor, as I understand the practice—the practice I have always followed at least—differing from the State Court, the briefs are filed with the Clerk rather than at the Judge's Chambers.

The Court: That is preferable. I have accepted them and filed them, myself.

Mr. Naus: Then when the order of submission is made, the Clerk is charged with the duty of sending the papers to the Court?

The Court: That is right, as soon as the order comes in he simply notifies the Court. If the submission has been made to the Clerk, that is the procedure. You can write to the Judge.

Mr. Prince: If the Court please, I have one other thing in my mind that I think ought to be made clear. Out of a great abundance of caution Mr. Richberg and I both feel we should make a more elaborate motion for judgment in this case and for judgment on the pleadings than has been made.

Mr. Naus: I will consent right now that they may either include that in their briefs or accompany their briefs with such a [164] motion.

Mr. Prince: A written motion if we so desire.

The Court: Do you want to file a written motion with the Court?

Mr. Prince: Mr. Naus has given us that privilege.

The Court: He has given you more privileges than the Court does. I always say you may file a written statement of a motion that will be co-extensive with what you expect in court, but Mr. Naus goes further and says you can make any.

Mr. Naus: Sure, he can make any.

The Court: Under those circumstances, I suggest you do not delay too many days in filing that.

Mr. Naus: It will be a nicely written paper motion for judgment following out our suggestions

The Court: If there is nothing further, we will proceed to close.

(Thereupon the Court adjourned.)

[Endorsed]: Filed Oct. 31, 1940. [165]

PLAINTIFF'S EXHIBIT No. 1

: AGREEMENT

Between the

Southern Pacific Company
(Pacific Lines, Excluding Former El Paso and
Southwestern System)

and the

General Committee of Adjustment

of the

Brotherhood of
Locomotive Engineers
Southern Pacific Company
(Pacific Lines)

Effective January 9, 1931

Southern Pacific Co. et al.

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AGREEMENT

Between Southern Pacific Company (Pacific Lines) and General Committee of Adjustment of Brotherhood of Locomotive Engineers of the Southern Pacific Company (Pacific Lines) (except former El Paso & Southwestern System).

It is hereby understood and agreed between the Management of the Southern Pacific Company (Pacific Lines) and General Committee of Adjustment of Brotherhood of Locomotive Engineers, that the following rules and regulations covering rates of pay and working conditions of engineers on the Pacific Lines of the Southern Pacific Company (except former El Paso & Southwestern System) shall be in effect on and after May 1st, 1928.

Passenger Service.

ARTICLE 1.

Basic Day.

Section 1. One hundred miles or less (straight-away or turn-around), five hours or less, except as provided in Article 6, Section 1, shall constitute a day's work; miles in excess of 100 will be paid for at the mileage rate provided, according to class of engine.

Valley Districts.

Sec. 2. On all parts of the System, excepting between points as noted in Section 3, the minimum rates of wages per day of an engineer shall be:

(a) Rates of Pay.

Weight on Drive	. /	 	Engineers Per Day
			\$6.56
80,000 to 10	00,000 lbs	 	6.56
100,000 to 1	40,000 lbs	 	6,65
140,000 to 1'	70,000 , lbs	 	6.73
170,000 to 20	00,000 lbs	 	6.82
200,000 to 2	50,000 lbs.	 	6.90
250,000 to 30	00,000 ·1bs	 	6.99
300,000 to 3	50,000 lbs.	 	• 7.07
350,000 to 40	00,000 lbs	 	7.16
400,000 to 4	50,000 lbs,	 	7.24
450,000 to 50			
500,000 lbs.			
Mallets rega			

Mountain Districts.

Sec. 3. Between Eugene and Dunsmuir via Klamath Falls; Roseburg and Gerber; Sacramento and Sparks; Bakersfield and Los Angeles; Mojave and Owenyo; Los Angeles and Indio, including branches between Los Angeles and Indio, the minimum rates of wages per day of an engineer shall be:

(a) Rates of Pay.

Weight on Drivers				Engineers Per Day
Less than 80,000	lbs.			\$7.25
80,000 to 100,000) lbs			7.25
100,000 to .140,000	lbs.			5 7.45
100,000 to 140,000 140,000 to 170,000) lbs			47.65
170,000 to 200,000) lbs			7.74
200,000 to 250,000				
250,000 to 300,000	llbs.	,	g811 No. 1	7.91
300,000 to 350,000				

350,000 to 400,000	lbs.	 8.08
400,000 to 450,000	lbs.	8.16
450,000 to 500,000		8.25
500,000 lbs. and o		8.33
Mallets regardless		 8.55

Minimum Daily Guarantee.

Sec. 4. (a) In all passenger service, the earnings from mileage, overtime or other rules applicable, for each day service is performed, shall be not less than \$7.46 for engineers.

In applying the \$7.46 minimum for engineers in passenger service, it is intended that on assignments where the men run so as to make only the equivalent of a single trip in one direction each day, they shall be paid the guaranteed minimum for each single trip.

For example: On a 100-mile division men double the road Monday, lay over Tuesday, double Wednesday, and lay over Thursday, etc. They should be allowed the minimum for each leg of their turnaround trip.

On the same division other crews double the road Monday and Tuesday, and lay over Wednesday, double Thursday and Friday, and lay over Saturday. These men make the equivalent of four single trips every three days, and therefore would not be entitled to the minimum for each trip.

Question 6, Int. No. 1, Supplement No. 24:

May amounts earned under overtime rule, terminal delay, backouts, etc., be applied against these guarantees?

Decision: Yes.

Question 7, Int. No. 1, Supplement No. 24:

Are former guarantees higher than provided by this Section maintained?

Decision: Yes.

Question 8, Int. No. 1, Supplement No. 24:

May runs of under 80 miles in each direction be placed on a one way basis and a minimum day allowed in each direction?

Decision: Yes, if definitely assigned, in which case overtime rules applicable to through passenger service in effect shall apply.

Rates For Electric and Gasoline Passenger Service.

- Sec. 4. (b) Engineers employed on electric locomotives in passenger service to be paid the rates shown in preceding tables, based upon weight on drivers. In the application of the rates for various driver weights in electric locomotive service, the total weight on drivers of all units operated by one engine crew shall be the basis for establishing the rate.
- (c) Electric car service, whether operated in multiple unit or single unit, to be paid minimum rate in preceding tables.

Question 11, Int. No. 1, Supplement No. 24:

Do the minimum earnings fixed by Section 4 (a) also apply in short turnaround electric passenger service whether operated by electric locomotive or multiple unit?

Decision: Yes.

(d) All motor cars used in passenger service operated under train rules by engineers, regardless of whether operated by gasoline, steam, electricity, or other motive power, to be paid minimum rate in preceding tables.

Freight Service.

ARTICLE 2.

Basic Day.

Section 1. In all classes of service covered by Article 2, 100 miles or less, eight hours or less (straight-away or turn-around) shall constitute a day's work; miles in excess of 100 will be paid for at the mileage rates provided, according to class of engine or other power used.

Question 47, Int. No. 1, Supplement No. 24:

Certain railroads formerly paid 100 miles between terminals notwithstanding the distance may have been less than 100 miles. Does this section permit operating turnarounds turning at terminal on continuous time and mileage?

Decision: No. Schedule rules and accepted practices will govern.

(Plaintiff's Exhibit No. 1 continued) Valley Districts.

Sec. 2. Minimum rates of pay on all parts of the System, excepting between points as noted in Section 3, for engineers in through and irregular freight, pusher, helper, mine run or roustabout, belt line or transfer, work, wreck, construction, snow-plow, circus trains, trains established for the exclusive purpose of handling milk and all other unclassified service shall be as follows:

(a) Rates of Pay.

				e e	Engineers Steam, Electric or other	
• .•	Weight on Drivers		٠		Through	Local
Less	than 80,000	lbs	4		\$7:28	\$7.80
80,0	00 to 100,000	lbs. *			7.37	7.89
100,0	00 to 140,000	lbs		yi.	7.46	.7.98
	00 to 170,000		- 4			8.23
170,0	00 to 200,000	lbs			7.88	8.40
200,00	00 to 250,000	lbs.		0	8.05	8.57
250,00	00 to 300,000	lbs	4		8.20	8.72
300,00	00 to 350,000	Ibs.			8.35	8.87.
350,00	00 lbs. and o	ver			8.56	9.08
Malle	ts less than 2	275,000 1	bs		9.10	9.62
Malle	ts 275,000 lbs	and ov	er		9.33	9.85

Note: The terms "pusher" and "helper" are synonymous, meaning "helper service".

Question 31, Int. No. 1, Supplement No. 24:

Where mine run, belt line, or transfer service, pusher and helper service, etc., was formerly paid yard rates, and is by this article paid the same rates as through freight service, is such service

now subject to road conditions, such as terminal switching allowances, final terminal delays, etc.?

Decision: No; but through freight rules as to mileage and road overtime shall apply.

Mountain Districts.

Sec. 3. Between Eugene and Dunsmuir via Klamath Falls: Roseburg and Gerber; Sacramento and Sparks: Bakersfield and Los Angeles; Mojave and Owenyo; Los Angeles and Indio, including branches between Los Angeles and Indio, the minimum rates of wages per day of an engineer shall be:

(a) Rates of Pay.

		1		Engli Steam, Elect	neers trie or other
				power	per day
W	eight on Drivers			Through	r .Local
	than 80,000				\$8.03
80,00	00 to 100,000	1bs,		7.60	8.12
	00 to 140,000				8.23
.140,00	00 to 170,000	1bs		7.96	. 8.48
	00 to 200,000				8,65
	00 to 250,000				8.82
250,00	00 to 300,000	lbs		8.45	8.97
	00 to 350,000				9.13
	0 lbs. and o			8.82	9.34
Mallet	s less than	275,000 Th	8.	9,35	9.87
Mallet	ts 275,000 lb	s, and over		9.58	10.10

Sec. 4. (a) For local or way freight service, 52 cents per 100 miles or less shall be added to the through freight rates, according to class of engine. Miles over 100 to be paid for pro rata. Local rates tabulated in this Article determined by this method.

(b) In freight service of over 100 miles on mountain districts engineers will be paid 46 cents per 100 miles in addition to rates shown in Article 2, Section 3.

Excess Mileage.

ARTICLE 3.

Between the following named points, mileage in excess of actual distance between such points, shall be allowed, viz.:

Passenger Service.

Between	Actual Mileage	Allowed Mileage
Los Angeles and Bakersfield	170	175
Bakersfield and Mojave	. 68	75
Rocklin and Truckee	97 .	105
Roseville and Truckee	. 101	109
Red Bluff and Dunsmuir	. 99	.105
Gerber and Dunsmuir	. 109	. 115

Freight Service.

Between	Actual Mileage	Allowed
Los Angeles and Mojave	100	105
Mojave and Bakersfield	68	. 75
Sacramento and Truckee	120	152
Roseville and Truckee	101	121
Roseville and Summit .		. 104
Roseville and Norden	85	102
Norden and Roseville		103
Rocklin and Truckee	97	117
Rocklin and Summit	83	- 100 -
Colfax and Summit	51	6.1
Colfax and Norden	50 °	60 .
Colfax and Truckee	65	78 .
Red Bluff, and Dunsmuir	99	138

Corbon and Dungunia		
Gerber and Dunsmuir	109	148 .
Dunsmuir and Ashland	108	139
Dunsmuir and Hornbrook	72	101
Hornbrook and Ashland	36	
Ashland and Roseburg	1431/2	1441/5

Allowed mileage stated as per this Article will not be allowed on runs not covering the entire distance between points named.

Class Rates of Engines and Combination Service.

ARTICLE 4.

Section 1. Class rates of engines as specified in Articles 1 and 2 shall apply to all rates of pay; except as otherwise provided.

- Sec. 2. (a) Where two or more engines of different weights on drivers are used during a trip of day's work, the highest rate applicable to any engine used should be paid for the entire day or trip.
- (b) If a type of locomotive is introduced on a railroad which formerly was not in use on that railroad and the rates herein provided are less than those in effect on other roads in the territory, the rates of the other roads shall be applied.
- Sec. 3. Road engineers performing more than one class of road service in a day or trip, will be paid for the entire service at the highest rate applicable to any class of service performed, with a minimum of 100 miles for the combined service, ex-

(Plaintiff's Exhibit No. 1 continued) cept when used in freight or passenger service over part of a trip and balance run light, will be paid on same basis as the engineer who is helped.

It is understood that under this rule, excess mileage shown in Article 3 will not be paid unless service covers the entire specified territory.

Beginning and Ending of a Day.

ARTICLE 5.

In all classes of service, an engineer's time will commence at the time he is required to report for duty, and shall continue until the time the engine is placed on the designated track or he is relieved at terminal.

Turnaround Trip Service.

ARTICLE 6.

Section 1. (a) On short-turnaround passenger runs no single trip of which exceeds eighty (80) miles, including Suburban Service, overtime shall be paid for all time actually on duty or held for duty in excess of eight (8) hours (computed on each run from the time required to report for duty to end of that run) within ten (10) consecutive hours; and also for all time in excess of ten (10) consecutive hours computed continuously, from the time first required to report to final release at end of last run. Time shall be counted as continuous service in all cases where the interval of release from

duty at any point does not exceed one hour. Overtime at one-eighth of the daily rate according to class of engine and district, with a minimum of 83½ cents per hour to be computed on the minute basis. This rule applies regardless of mileage made; for calculating overtime under this rule the Management may designate the initial trip.

Question 19, Int. No. 1, Supplement No. 24:

Does this rule apply to extra and unassigned service?

Decision: Yes; in which case call shall specify whether crew is to be paid on turnaround or straightaway basis.

Question: Engineer assigned to short turnaround passenger service on certain dates uses motor car on certain trips of his assignment and steam train on balance of assignment. How should he be compensated?

Answer: At the highest rate of engine used, as per Section 2 (a), Article 4.

Question: (a) Is it permissible to hold engineer in short turnaround passenger service on duty at turning point of assignment and compensate him for all time on duty under 8-within-10 hour rule?

(b) In case it is desired to relieve one member of crew at turning point and hold the other on duty to care for engine, who should be relieved?

Answer: (a) Yes.

(b) The engineer should be relieved.

- Sec. 1. (b) If it is desired to use extra passenger, pooled freight or extra engineer in short turnaround extra passenger service, notice of such intention must be given at time call is made for initial trip. It is not necessary that number of trips or destination be specified in call.
- (c) Pooled or extra engineers used as helpers on passenger trains not covering entire district or division over which train is run do not come under the eight within ten hour rule, and should therefore be compensated under provision of schedule applicable to extra helpers.

Note: This not to apply to engineers filling vacancies in assigned helper service.

- Sec. 2. An engineer making an irregular turnaround trip in passenger service, turning between terminals and returning to starting point, any leg of which exceeds eighty (80 miles, 20 miles per hour shall be the basis for computing overtime; overtime at the rate of 12½ miles per hour, according to class of engine and district.
- Sec. 3. (a) An engineer making an irregular turnaround trip in freight service, turning between terminals and returning to starting point on runs 100 miles or less, eight hours or less, 100 miles will be allowed and overtime will begin at the expiration of eight hours. On runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by 12½. Overtime shall be paid for our the minute basis, at an hourly rate of 3/16ths of the

(Plaintiff's Exhibit No. 1 continued)
daily rate, according to class of engine or other
power used.

(b) Engineers in pool or irregular freight service may be called to make short trips and turnarounds with the understanding that one or more turnaround trips may be started out of the same terminal and paid actual miles with a minimum of 100 miles for a day provided, (1) that the mileage of all the trips does not exceed: 100 miles, (2) that the distance run from the terminal to the turning point does not exceed 25 miles, and (3) that engineers shall not be required to begin work on a succeeding trip out of the initial terminal after having been on duty eight consecutive hours, except as a new day, subject to the first-in first-out rule or practice. (This does not apply to engineers in pusher and helper service, mine runs, work trains, wreck trains.)

The number of trips need not be specified when men are called, but the call should specify short turnaround service.

Question 79, Int. No. 1, Supplement No. 24:

Must the crew actually leave the terminal before the expiration of eight hours?

Decision: No, but crews should not ordinarily be required to begin work on a second or succeeding trip when it is apparent that the departure from the terminal will be delayed beyond eight hours from going on duty on initial trip.

Question 80, Int. No. 1, Supplement No. 24:

In operating turnaround service under this section, may crews be turned at a terminal out of which other crews operate?

Decision: Yes.

Question 81, Int. No. 1, Supplement No. 24:

Where crews are called for turnaround service in what territory may they be used?

Decision: They may be used in either or both directions out of the initial ferminal in territory where it is permissible to use them for other than short turnaround trips.

Note: An engineer after completing each trip in short turnaround service shall be placed at the foot of the list and permitted to work his way toward first out position, but may, if needed for another short turnaround trip within eight hours from time ordered to report for duty on first trip, be run around other engineers without runaround penalty.

If engineer placed at foot of list reaches first outposition prior to expiration of eight hours from
time first ordered to report for short turnaround
service and can be used on another short turnaround trip before the expiration of the first eight
hours, it will be optional with the Company to call
him for other service or hold him for short turnaround service.

The foregoing applies to Section 3 (b), Article 6, only.

Sec. 4. Whenever miles run exceed the limits as specified in Sections 1, 2 and 3 of this Article, actual miles will be allowed.

Sec. 5. If the trip is a turnaround, as specified in Sections 2 and 3 (a) of this Article, the starting point is understood to be the terminal as well.

Sec. 6. (a) Engineers assigned to a series of branch freight, combination freight and passenger, or mixed runs, or established main line turnaround local freight service, will compute their time as a single trip. Bulletin shall name terminals and turning points and will definitely specify service to be performed. In no case shall any portion of the assignment include trip or trips in helper service.

Note: Last sentence agreed to with the understanding that this will not set aside or supersede decisions wherein engineers were used to push trains out of yard within yard limits.

(b) Continous time to be allowed from time engineer is required to report for duty on initial trip and to end upon completion of final trip of assignment with a minimum of 100 miles. On runs of 100 miles or less, overtime will begin at the expiration of eight hours, and on runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by 12½. Overtime shall be paid for on the minute basis at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used. When miles run exceed these limits actual miles will be allowed.

Question: Assignment under this Section, A to
B and return, distance 90 miles round trip; thence
in opposite direction A to C and return, distance 59
miles; total mileage of assignment 149 miles. On
a certain date engineer consumes 11 hours 45 minutes making trip A to B and return, and is released without making trip A to C and return. How
should he be compensated?

Answer: Allow 149 miles, mileage of assignment, and overtime, if any, after schedule of 11 hours 55 minutes.

·(c) Engineers assigned under this rule who are required to perform work not a part of regular assignment, such as pulling trains into terminal account of crew of which tied up under law, engine failure, or account shortage of fuel or water in locomotive, will be paid a minimum of 100 miles for each time so used in addition to assignment: in like manner when engineers en route are taken off assignment and required to bring engine or train to terminal, crew of which tied up under law. or account engine failure, or shortage of fuel or water in locomotive, will be paid a minimum of 100 miles for each time so used in addition to assignment. If used en route to make side trip off assigned territory and such trip covers a distance ' of more than twelve miles in one direction, a minimum of 100 miles will be allowed in addition to assignment. In each case rates and rules covering such service will govern. Actual time in other

(Plaintiff's Exhibit No. 1 continued) service to be excluded in computing overtime in assigned service. Under the above conditions, engineer used to bring disabled train to terminal will compute time as a single trip from time leaving assignment until return thereto with a minimum of 100 miles.

Note: In cases where main track is obstructed due to derailments, engine failures, break-in-twos and traffic is threatened with serious delay and assigned engineers under this Article are used to assist in relieving obstruction, question of run-arounds will be disposed of on their merits between representatives of the Company and the Brother-hood of Locomotive Engineers.

(d) Switching before beginning of first trip and after the completion of final trip will be computed separately and paid for at one-eighth of the daily rate applying to class of engine, service and district on the minute basis, irrespective of time on road. Switching time to be continuous from the time work is begun until it is completed and train coupled together. This time not to be counted in computing road overtime; except that when the number of hours switching is not equal in money value to the sum of the money values of switching hours and road overtime hours, switching time shall not be paid for and the road overtime shall be calculated and paid for the same as if switching had not occurred.

Example—	,	
	7	A.M.
Switches at A until	9	A.M.
Runs A to B, return A, d	listance 100	
miles	3	P.M.
Switches A until	5	P.M.
Relieved A	5	PM

Compensation—100 miles, plus 4 hours switching at one-eighth of daily rate. Such allowance being greater than two hours' overtime at time and one-half.

Example—	•		
Required to report at A		.	A.M.
Switches at A until		8	A.M.
Runs A to B, return A .	•	4	P.M.
Switches A until	0801110111 0111111111111111111111111111	5	P.M.
Relieved A	73/88000818088000000000000000000000000000	5	P.M.

Compensation—100 miles, plus two hours' overtime at three-sixteenths of the daily rate per hour. In this case the money value of the road overtime at three-sixteenths of the daily rate exceeds the allowance of two hours' switching at one-eighth of the daily rate.

Logging Service.

ARTICLE 61/2.

Section 1. (a) Engineers assigned to Logging Service exclusively will be paid freight rates, ac-

cording to class of locomotive and district on which used; 100 miles, or less, eight hours, or less, to constitute a day; over 100 miles, pro rata. On runs of 100 miles or less overtime will begin at the expiration of eight hours; on runs of over 100 miles overtime will begin when the time on duty exceeds the miles run divided by 12½. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used. Time to be computed continuously from the time required to report for duty until released at home or district terminal.

- (b) Assignments of engineers to Logging Service exclusively will be made by bulletining vacancies or new runs in accordance with rules in effect. Engineers to be assigned to one home terminal and may be run in and out of said home terminal during a day's work in Logging Service, without regard for rules defining the completion of trips.
- clusively and used in other service will be allowed a minimum of one hundred miles at the rate applying on the locomotive in the service, and on the district where performed for each time so used. Time thus consumed to be excluded in computing overtime in Logging Service. Rules defining the completion of trip to govern for all service performed outside of the Logging Service assignments.
 - (d) Engineers assigned to Logging Service ex-

(Plaintiff's Exhibit No. 1 continued) clusively will be allowed one hundred miles at the rate applying on the locomotive on which last used for each calendar day of assignment on which no service is begun.

Helper Service.

ARTICLE 7.

- Section 1. (a) Engineers assigned to helper service exclusively will be assigned to one home terminal and shall be paid through freight rates as specified in Section 2, Article 2, and Sections 3 and 4 (b), Article 2, with a minimum of \$7.28.
- (b) The time of an engineer assigned to helper service exclusively will commence at the time he is required to report for initial duty, and will conclude at the time the engine is placed on the designated track or relieved at his home terminal, or regular division terminal, upon completion of final trip begun within eight hours from initial call. If used again on a trip which departs from home terminal or a regular division terminal, after the expiration of eight-hour helper day, he will begin a new day irrespective of dates.
- (c) An engineer assigned to helper service exclusively will be allowed a minimum of 100 miles for the first eight hours or less; when the miles run exceed these limits, actual miles will be allowed. When mileage is 100 miles or less, overtime will begin at the expiration of eight hours; when mileage in excess of 100 miles is made, over-

(Plaintiff's Exhibit No. 1 continued) time will begin when the time on duty exceeds the miles run divided by 12½. Overtime shall be

paid for on the minute basis at an hourly rate of three-sixteenths of the daily rate according to class of engine or other power read

of engine or other power used.

Question: (a) Engineer called and before starting service call is annulled?

Answer: Allow minimum of two hours' "called and not used".

Question: (b) After having made trip in helper service is again called and engineer released without service on second call before expiration of 8-hour helper day?

Answer: Call having occurred during period engineer under pay, and call annulled prior to expiration of 8-hour helper day, no additional compensation allowed.

Question: (c) Engineer brought on duty 9:40 A. M., returns from helper trip and released 4:05 P. M.; again called for 5:10 P. M. and call annulled at:6:20 P. M.?

Answer: Allow minimum of 100 miles and overtime at 3/16ths daily rate, computed from 9:40 A.M., until final release, 6:20 P.M.

Question: (d) Engineer brought on duty for initial service 7:10 P. M., performs service repairing engine and proceeds to point in yard, and call annulled 9:05 P. M. Again brought on duty 1:30 A. M., departs 2:30 A. M. in helper service, returns and released 10:35 A. M.?

Answer: Engineer having performed service on first call his helper day begins at 7:10 P. M., and having departed terminal on second call before expiration of 8-hour helper day, beginning at 7:10 P. M., should be allowed minimum of 100 miles, and overtime at 3/16ths daily rate, computed from 7:10 P. M. until released 10:35 A. M.

Question: (e) Engineer called for certain time, and after coming on duty and without being released, time of departure is set back say two hours?

Answer: Time of trip should be computed from time reported for duty on first call.

Question: (f) Assigned helper engineer on duty, home terminal of helper assignment, 12:50 P. M.; performs helper service, arriving at district terminal 7:25 P. M.; later called to deadhead from district terminal to home terminal of helper assignment, departing district terminal deadhead 9:00 P. M. How should he be compensated?

Answer: Deadhead movement from district terminal starting after expiration of 8-hour helper day should be paid for under Article 28, applying to deadhead service; however, if deadhead had begun before expiration of 8-hour period, same would have been paid as part of first 8-hour helper day under combination rule, Article 4. Section 3.

Question: (g) Assigned helper engineer performs helper service and on returning to helper terminal tied up for rest prior to expiration of 8-hour helper day. How should he be compensated?

Answer: If such engineer is not needed for further service before expiration of 8-hour helper day, should be allowed a minimum day; however, if required for further service before expiration of first 8-hour helper day, and not available, account marking rest, should be paid only for actual time worked, miles or hours, whichever greater.

Question: (h) Engineers assigned to helper service called at their helper terminal in their order, first-in first-out, for initial service, as follows:

"A"	***************************************			 	 9	:00:	A:	M:
"B"		1.				:30.		
			-		1	10	D	11

All three engineers make trips in helper service and return to helper terminal. Call is placed for helper engineer for 4:10 P. M., and "C" is used. Is "A" entitled to runaround account not used on the 4:10 P. M. trip?

Answer: No; these engineers were called in turn for initial service and Company is privileged to use them as best suits the requirements of the service during the eight-hour helper day.:

Sec. 2. (a) Engineers assigned to helper service exclusively when used for any service other than assignment, will be paid not less than 100 miles for each time so used, according to the rates and rules governing such service. Actual time in other service to be excluded in computing overtime in assigned service.

- (b) When engineers in assigned helper service are required to couple in and assist trains on account of road engine being disabled such work should be included in their regular helper assignment.
- (c) If an engine is broken down and has to be cut out of train, or in case trains tie up under the law, assigned helper engineer used to handle such trains, would be considered outside of regular helper work.
- See. 3: Engineers assigned to helper service exclusively shall be allowed 100 miles at the rate applying to locomotive last used for each date on which no service is begun, excepting where engineer asks for rest, the hours extending to 12 o'clock midnight, the call time to be included.

Question: Engineer called off extra board and deadheaded 8:30 A. M. to home terminal of helper assignment to fill vacancy in helper service during life of bulletin. Arrived helper terminal 11:30 A. M. and placed on helper board. Performed no service that date. How should he be compensated?

Answer: Should be paid for the deadhead service as per Article 28. If this compensation does not equal minimum of 100 miles, as specified in Section 3, this Article, the difference should be made up.

Question: When an engineer is sent to relieve an engineer assigned to helper service at an ont(Plaintiff's Exhibit No. 1 continued) side point, what position should he take on helper board?

Answer: Relieving engineer shall be placed in space of assigned engineer laying off as soon as he is available. If such space has reached first out position before engineer is available for call, the space shall be maintained in first out position and the relieving engineer placed thereon as soon as available.

- Sec. 4. Other engineers will not be used in helper service until all regularly assigned helper engineers, who are available have been used, it being understood that this will not apply to regular assigned helper engineers from other helper stations or road engineers doubleheading through helper stations.
- Sec. 5. Engineers assigned to helper service exclusively will be compensated for actual time consumed in initial or terminal switching per Article 15. This does not apply where helper engineer handles cars in cutting helper engine in or out of train, as this is a part of helper service.

It is further understood that helper engineers will not be used in switching service when road engineers are available.

Work Train Service.

ARTICLE 8.

Section 1. Engineers in work train service shall be paid through freight rates as specified in Sec(Plaintiff's Exhibit No. 1 continued) tion 2, Article 2 and Section 3, Article 2. One hundred miles or less, or eight hours or less, will constitute a day; over 100 miles pro rata. On runs of 100 miles or less, overtime will begin at the expiration of eight hours; on runs of over 100 miles overtime will begin when the time on duty exceeds the miles run divided by 12½. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used. Time to begin when required to report for duty and to end when released at terminal or tie-up point.

- Sec. 2. Engineers performing service enumerated will be paid miles or hours, whichever is the greater, in addition to work train day;
 - (a) Handles light engine or engine and caboose from district terminal to outside point and goes into work train service, or handles light engine or engine and caboose from outside point to district terminal on discontinuance of work train.
 - (b) Handles light engine or engine and caboose on completion of work train day from outside point to district terminal or other point for fuel, water, repairs, or other necessary attention to engine.
 - (c) Handles light engine or engine and caboose from district terminal or other point after having been fueled, watered, repaired, or given

(Plaintiff's Exhibit No. 1 continued) other necessary attention, or handles engine to take the place of work train engine to point where work train service begins.

- Sec. 3. (a) Should work train engineer perform any service out of terminal after being released as specified in Section 1, this Article, he shall begin a new day; time and mileage for subsequent service to be computed independently in accordance with the rules for class of service performed.
- (b) When engineer is deadheaded to tie-up point of work train to fill vacancy on same and, or, on completion of day's work deadheads from tie-up point of work train to district terminal; he will be allowed deadhead mileage in accordance with Article 28, in addition to time allowed in work train service.
- (c) An engineer laying off and reporting for duty, or an engineer making displacement, will, on his request, be advised where work train is to tie up on completion of day's work and will be permitted to assume duty at such tie-up point, provided the tie-up point can be determined sufficiently in advance.
- Sec. 4. (a) On long haul work trains of 100 miles or over, in the aggregate, or work train is run over entire through freight district, engineer shall be paid full freight rates.
 - (b) When engineers who are assigned to reg-

(Plaintiff's Exhibit No. 1 continued) ular runs or pooled service are used in work train service, they shall be paid full freight rates.

Sec. 5. Engineers held for work train service shall be allowed 100 miles at the minimum freight rate of the district for each day on which no service is begun. Sundays excepted when at Division terminals, or at bulletined tie-up points.

Sec. 6. In all cases where full freight rates are mentioned, final terminal delays, overtime and mileage rates of a freight train shall apply.

Sec. 7. Engineers in work train service will be run to a station where a place to eat and sleep at off shifts can be had, excepting where the railroad furnishes accommodations.

Sec. 8. The bulletined tie-up point of engineers assigned to work train service will not be changed unless the work has progressed sufficiently to warrant a change, and such new bulletined tie-up point must be in excess of 25 miles from former bulletined tie-up point.

It is understood that where bulletined tie-up point is changed as above and the service required of the engineer is similar to that bid in by him, it will not be considered a new run, and will not be bulletined for seniority choice of engineers, and he will accept the provisions of Section 5, this Article, at such bulletined tie-up point. Bulletins changing tie-up points will read as follows:

"Effective Sunday (blank date), bulletined

tie-up point for work train held by Engineer (blank) will be (blank) instead of (blank)."

Sec. 9. In construction of new lines forming a part of the Southern Pacific, Pacific Lines, engineers on the seniority district of that part of a line where the new line diverges, will be given the right to bid for service in the Construction Department under the seniority rules governing. If no application is received the youngest engineer on the working list of that district will be assigned. The men assigned to such service will be compensated as to rates of pay and hours of service in accordance with agreement provisions. The working rules and conditions of the Construction Department will obtain.

Wrecking Service,

ARTICLE 81/2.

Engineers in wrecking service shall be paid through freight rates as specified in Section 2, Article 2 and Section 3, Article 2. One hundred miles or less, or eight hours or less, will constitute a day; over 100 miles pro rata. On runs of 100 miles or less, overtime will begin at the expiration of eight hours; on runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by 12½. Overtime shall be paid for on the minute basis, at an hourly rate of three-

(Plaintiff's Exhibit No. 1 continued) sixteenths of the daily rate, according to class of engine or other power used. Time to be computed continuously from time required to report for duty at terminal until engineer reaches terminal, unless tied up under the law.

Question: How shall engineers be called for wrecking service?

Answer: When call is placed for wrecking outfit, engineer standing first out and entitled to the
work shall be called, except in cases where main
track is blocked and to call engineer standing first
out would delay wrecker beyond time members of
wrecking crew are ready to proceed; in such case,
the Company will be privileged to use engineers
who can be secured with the least possible delay,
without runaround penalty.

Snow Plow Service. ARTICLE 9.

Engineers used in rotary snow plow service and engineers on engines pushing rotary or wedge plows, or in flanging service, shall be paid freight rate as per class of engine and district, eight hours or less, 100 miles or less, constitute a day. On runs of 100 miles or less, overtime will begin at the expiration of 8 hours. On runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run, divided by 12½. Overtime shall be paid for on minute basis at an hourly rate of

3/16ths of the daily rate, according to class of engine or other power used. If used out of tie-up point or terminal after expiration of 8 hours, will begin a new day.

Note: It is understood that engineers operating rotary will be paid same rate as engineer pushing rotary.

Fire Train Service-Sacramento Division.

ARTICLE 91/2.

Section 1. Engineers assigned to fire train service shall be paid through freight rates per day provided in Article 2, Section 3.

- Sec. 2. Working hours will be from 6:00 A. M. to 2:00 P. M. The fireman watching the engine from 6:00 A. M. to 12:00 noon; the engineer watching engine from 12:00 noon to 6.00 P. M. without regard to compensation defined in Section 4.
- Sec. 3. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used.
- Sec. 4. Service other than fire train service performed between the east and west mile board of the station designated in bulletin of assignment as the home terminal of the fire train crew, will be computed separately on the minute basis, with a minimum of one hour, and paid for at one-eighth of the daily rate, such allowance to be made in

(Plaintiff's Exhibit No. 1 continued) addition to compensation provided for fire train service.

- Sec. 5. When used beyond the mile boards, in other than fire train service, engineer will be compensated for the service performed at the rate and under the rules governing. Such allowances to be made in addition to compensation provided for firetrain service.
- Sec. 6. Engineers in fire train service used in flanger service will be paid for same in addition to compensation for fire train service.
- Sec. 7. Engineers in fire train service called for such service before 6:00 Å. M. or after 2:00 P. M. will be paid for such on overtime basis at three-sixteenths of the daily rate.
 - Sec. 8. An engineer assigned to fire train service and required to watch his engine between the hours of 6 P. M. and 10 A. M. shall be paid for the time consumed on the minute basis, at one-eighth of the daily rate, with a minimum of one hour, same to be allowed in addition to compensation for fire train service.
 - Sec. 9. Engineers assigned to fire train service will be granted two days off per month with pay, provided that a full month's service has been rendered in the preceding month; for example: If engineer works the full month of June he will be given two days off in July with pay.
 - Sec. 10. Engineers assigned to fire train ser-

vice who are required to perform work train service or make movements from five train terminal to another point and return for purpose of securing water, fuel or other supplies used for commercial purposes or for use of contractors, or to replenish supplies used by such contractors, will be considered as performing service not a part of fire train assignment, and a minimum of 100 miles will be allowed. This will not set aside or modify provisions of Section 4, or Definition No. 2, this Article.

Engineers assigned to fire train service, who run their engines to some point for purpose of having engines given necessary attention and return with same engines or other engines for fire train use, will be considered as performing fire train service and compensated accordingly.

Engineers assigned to fire train service who are required to make movement to some point to replenish oil, water, or other necessary supplies, except as provided by Paragraph 1, will be considered as performing fire train service and compensated accordingly.

Engineers who handle fire train engine, or engine with fire train equipment and or caboose from fire train terminal to district terminal on discontinuance of fire train service, or from district terminal to fire train terminal on inauguration of fire train service, will be paid miles or hours, whichever is the greater, for such movements, in addition to fire

(Plaintiff's Exhibit No. 1 continued) train day, provided, however, if such movement is started before or after fire train working hours, a minimum of 100 miles will be allowed.

Definition of fire train service:

- 1. Going to and returning from fire.
- 2. Time consumed at fire.

Note: In connection with definition No. 2, it is understood whatever duties have been performed in the past at fire and paid for as fire train service will govern in the future.

- 3. Sprinkling sheds.
- 4. Supplying quarters used by fire train crews with water.
- 5. Supplying section quarters at Andover, Tamarack and Spruce with water.
- 6. Supplying locomotives with water when engines run short of water account of mechanical defects, derailments, wrecks, track obstructions, defects or shortage in station supply tanks occurring after crews depart from terminal.

Note: The fact Article 9½ (Fire Train Service) provides compensation and rules governing work performed at terminals, provisions of Section 7, Article 8, will not apply to this service.

Arbitrary Rates. ARTICLE 10.

In Oakland, Berkeley and Alameda Mole Suburban local passenger service in arbitrary rate of \$7.04 per day will be paid. Should steam service be substituted for electric service, an arbitrary rate of \$7.04 per day will be paid on engines with cylinders under 18 inches in diameter and \$7.17 per day on engines with cylinders 18 inches and over in diameter. Overtime at the rate of 86 cents per hour to be computed on the minute basis.

. In Oswego. Suburban local passenger service an arbitrary rate of \$6.81 per day will be paid on engines with cylinders under 18 inches in diameter and \$6.94 per day on engines with cylinders 18 inches and over in diameter. Overfime at the rate of 86 cents per hour to be computed on the minute basis.

Service as specified in this Article to be governed by the provisions of Article 6, Section 1 (a).

Switching Service. ARTICLE 11.

Section 1. The minimum rate of wages per ay shall be:

(a) Rates of Pay.

Weight on Deivers Less than 140,000 lbs. \$7.16 140,000 to 200,000 lbs. 7.33 200,000 to 300,000 lbs. 7.50 300,000 lbs. and over 7.67 Mallets under 275,000 lbs. 8.31 Mallets 275,000 lbs. and over 8.56

- (5) Eight hours or less shall constitute a day's work, overtime to be paid on minute basis at one and one-half times the hourly rate, according to class of engine. Time to begin when required to report for duty and to end at time engine is placed on designated track or engineer is released. Where engineers are required to register on and off duty, the time required to perform such service shall be construed to mean time on duty.
- (c) Except when changing off where it is the practice to work alternately days and nights for certain periods, working through two shifts to change off; or where exercising seniority rights from one assignment to another; or when extra men are required by schedule rules to be used, all time worked in excess of 8 hours continuous service in a twenty-four hour period shall be paid for as overtime, on the minute basis at one and one-half times the hourly rate, according to class of engine.

Should engineer be held on duty account failure of relief engineer to report at time specified, he will be paid on basis of time and one-half overtime until relieved from duty.

If engineer is held on duty beyond regular hours of assignment account of Company not furnishing relief, he will be paid a minimum of eight hours at time and one-half.

Note: An engineer sent to an outside point where extra list is not maintained to relieve man

holding regular assignment in yard service, and during period relieving regular assigned man is used on second shift within a twenty-four hour period, will be allowed time and one-half for service on second shift.

Question 90, Int. No. 1, Supplement No. 24:

What compensation should be allowed for additional service where a crew is regularly assigned to work 12 Midnight to 8 A. M. and (service performed not affected by exceptions outlined in this rule):

- (a) Is required to cover the third shift on the same day—4 P. M. to 12 Midnight?
- (b) Is required in an emergency to work 8:30-A. M. until 11:30 A. M.?
- (c) Is required in an emergency to work 8 P. M. to 12 Midnight (4 hours) on the same day?
- (d) Is given 48 hours' notice and assignment is moved up an hour, starting at 11:00 P. M. and being relieved at 7 A. M. and consequently in the 24-hour period works 9 hours, but not more than 8 hours on a shift?

Decision: (a) Eight hours at time and one-half. (b) Eight hours at time and one-half. (c) Eight hours at time and one-half. (d) On account of complying with the 48-hour provision, which makes it permissible to change beginning time, crows only entitled to a minimum day.

(Plaintiff's Exhibit No. 1 continued)
Question 91, Int. No. 1, Supplement No. 24:

An extra man is worked on two 8-hour shifts within the same 24-hour period, or on one 8-hour shift and is started on another shift in the same 24-hour period that spreads into the next 24-hour period. How shall he be paid for such service?

Decision: It should be understood that under that portion of Section 1 (c) applying to extra men when required to remain on duty in excess of eight hours in continuous service they will receive overtime at time and one-half on the minute basis. When they start a second trick within a 24-hour period, they will not be paid under the overtime rule, but will start a new day regardless of present rules and will receive for eight hours or less straight time rates. The intent of this is not to deprive extra men of extra work, which would result if time and one-half had to be paid for the second shift.

Question 92, Int. No. 1, Supplement No. 24:

What compensation should be allowed an extra man who is called and at 4 A. M. relieves a regular man, who is covering an assignment 12 Midnight to 8 A. M. and the assignment works until 9 A. M.?

Regular engineer working four hours?

Extra engineer working five hours?

Remainder of crew working nine hours?

Decision: Extra man will receive a minimum day only.

Question 94, Int. No. 1, Supplement No. 24:

If a yard crew was assigned for 10 hours and for some reason was relieved at the expiration of 8 hours, what number of hours is to be allowed?

Decision: A minimum of 8 hours. Assignments should be for 8 hours and time worked in excess thereof should be paid as overtime.

- (d) Engineers shall be assigned for a fixed period of time which shall be for the same hours daily for all regular members of a crew.
- (e) Engineers will be allowed 20 minutes for lunch between 4½ and 6 hours after starting work without deduction of pay.

Yard engineers will not be required to work longer than 6 hours without being allowed 20 minutes for lunch, with no deduction in pay or time therefor.

Note: Engineer is not relieved of care of engine during lunch period.

Calculating Assignment and Meal Periods.

- ·(f) The time for fixing the beginning of assignments or meal periods is to be calculated from the time fixed for the crew to begin work as a unit without regard to preparatory or individual duties.
- have a fixed starting time and the starting time of an engineer will not be changed without at least 48 hours' advance notice. Practices as to handling of transfer crews are not affected by this section.

- (h) Where three eight-hour shifts are worked in continuous service, the time for the first shift to begin work will be between 6:30 A. M. and 8:00 A. M.; the second 2:30 P. M. and 4:00 P. M.; and the third 10:30 P. M. and 12:00 midnight.
- (i) Where two shifts are worked in continuous service, the first shift may be started during any one of the periods named in Par. (h).
- (j) Where two shifts are worked not in continuous service, the time for the first shift to begin work will be between the hours of 6:30 A. M. and 10:00 A. M., and the second not later than 10:30 P. M.
- (k) Where an independent assignment is worked regularly or at points where only one yard crew is regularly employed, they can be started at any time, subject to Par. (g).

Question 95, Int. No. 1, Supplement No. 24:

Should it be understood that paragraph (k) applies only to regular assignments, with no change in present practice for starting extra yard crews!

Decision: Yes.

- (1) A designated point will be established for engineers coming on and going off duty, and before such points are changed fortyeight hours advance notice will be given. Extra engineers will be notified when called the point at which required to report for duty.
- (m) The point for going on and off duty will be governed by local conditions. In certain localities

instructions will provide that engineers will report at the hump, others report at yard office, others at engine houses or ready tracks. It is not considered that the place to report will be confined to any definite number of feet, but the designation will indicate a definite and recognized location.

- (n) The foregoing paragraphs will also apply to engineers called or used in extra yard service.
- Sec. 2. All new or vacant assignments, or when the starting time of any assignment is changed two hours or more, shall be bulletined for seniority choice of engineers in accordance with Section 19, Article 32. Bulletins to show time and place engineers shall report for duty.
- Sec. 3. Where regularly assigned to perform service within switching limits, yard engineers shall not be used in road service when road engineers are available, except in case of emergency. When yard crews are used in road service under conditions just referred to, engineers shall be paid miles or hours, whichever is the greater, with a minimum of one hour, for the class of service performed, in addition to the regular yard pay and without any deduction therefrom for the time consumed in said service.
- Sec. 4. When engineers who are assigned to regular runs, extra passenger lists, or pooled service, are used in yard service, they shall be paid full freight rates. This includes extra engineers while

(Plaintiff's Exhibit No. 1 continued) in pooled freight service for filling the place of regular road engineers.

- Sec. 5. Engineers in boat transfer service at Port Costa and Benicia will be paid \$7.48 per day, switching hours of service to apply. Time and one-half for overtime.
- Sec. 6. Engineers assigned to haul freight between San Francisco and Bay Shore will be paid through freight rates, and through freight rules as to mileage and overtime will apply.
- Sec. 7. (a) When an engineer who is regularly assigned to switching service is used during the course of his duty to perform maintenance of way work within yard limits, such engineer will be paid for the entire day's work at regular yard rates.
- (b) In cases where an extra engineer is called and used to perform a combination of yard and maintenance of way work within yard limits, work train rates will apply for the day's service.

Guarantee.

(c) Yard assignments will not be canceled unless it is known in advance that same will be discontinued for a period of three calendar days or more.

Where assignments are thus canceled, engineers relinquish rights thereto and will be privileged to make displacement under rules, in effect. Yard assignments canceled under these conditions and later restored, will be bulletined for seniority choice under rules governing.

Engineers regularly assigned to shift in yard service, who are ready for service and do not lay off of their own accord, will be guaranteed not less than six days per week. If engineers, assigned seven days per week in yard service, do not work the following holidays (or the day preceding or following such holidays) New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, the day not worked shall be deducted. In computing weekly guarantee, the week will begin on Monday, on seven day assignments, and on day following regular layover day on six day assignments:

In making up guarantee, time so allowed will be paid at rate applying on the locomotive on which last used.

In cases where an extra engineer is sent to an outside point, where extra list is not maintained, to fill vacancy on regular assignment in yard service, guarantee will apply to such extra engineer during period he is filling such vacancy. However, at points where extra list is maintained and vacancy is being filled from such extra list, as per Section 3 (a) of Article 30, holiday or other day not worked during period extra men filling vacancy would not be paid.

Examples.

Example 1. Regular assigned engineer, six day assignment, lays off Monday, Tuesday and Wednes-

day. Thursday, July 4th, holiday, assignment not worked: Reports 4th and works Friday and Saturday. Under this example will not be paid for 4th.

Example 2. Regular assigned engineer, six day assignment, lays off Saturday. Monday, holiday, assignment not worked. Reports for work Monday and works Tuesday to Saturday inclusive. Would not receive pay for holiday.

Example 3. Regular assigned engineer, six day assignment, works Monday. For some reason, assignment does not work Tuesday (not a holiday). Works Wednesday. Thursday and Friday, and works two shifts on Saturday, or some other previous day in that week. Extra day made doubling will be used to offset day lost.

Example 4. Regular assigned engineer, six day assignment, works Monday. No service performed Tuesday, assignment not worked. Displaced Wednesday. Will receive one day for Tuesday. However, if regular man doubled Monday or man relieving him should double during balance of week, man displaced will not receive pay for day he did not work.

Example 5. Regular assigned engineer works Saturday, layover Sunday. For some reason, assignment does not work Monday. Displaced Tuesday by senior man. Will receive pay for Monday. However, if man making displacement should double during balance of week, extra day made in such double will, offset day lost by man displaced.

Example 6. Regular assigned engineer, seven day assignment, works Monday, Tuesday and Wednesday. For some reason, assignment does not work Thursday (not a holiday). Works Friday, Saturday and Sunday. Will receive pay for Thursday. However, if assigned man should double on any day during that week, he would not be paid for day lost Thursday.

Example 7. Regular assigned engineer, seven day assignment, works Monday. Tuesday, July 4th, a holiday, assignment does not work. Lays off Wednesday. Reports and works Thursday, Friday and Saturday. For some reason, assignment not worked Sunday. Will receive pay for Sunday, or a total of five days for the week. However, if assigned man should double on any of the days worked during that week, he would not be paid for Sunday.

Note: Engineer deadheading before or after performing extra yard service will be paid for such deadhead under Article 28.

Belt Line and Transfer Service.

Sec. 8. Whenever such service is established a differential will be considered.

Shop Yard Service.

Sec. 9. (a) Effective October 1, 1919, employees (excluding locomotive crane, operators and wrecking derrick engineers) who are assigned to and

(Plaintiff's Exhibit No. 1 continued) operate shop yard engines, will be paid the yard rates of wages and operated under the yard service rules as are specified in Supplements Numbers 15 (Engineers and Firemen) and 16 (Yardmen) to General Order Number 27, and such service shall be incorporated into the respective agreements on all roads in Federal operation.

- (b) This order is without prejudice to the seniority rights of employees who are now assigned to shop yard engines. Only as vacancies occur and new positions are created they will be filled from the seniority rosters of the Engineers, Firemen and Yardmen.
- (c) Rates of wages that are higher or rules for overtime that are more favorable to the employees than those hereby established, shall be preserved.
- (d) The provisions of Section 7 (e), this Article (guarantee) will apply to engineers assigned to shop yard service.

Guaranteed Full Time Per Week.

ARTICLE 12.

Section 1. When, from any cause, more engineers are assigned to a certain run than can (per actual mileage of said run) make full time at the standard pay for service and division on which such runs occur, mileage in excess of actual miles run will be allowed sufficient to give such engineers full time. Full time as herein referred to shall be understood to mean 100 miles at the stand-

ard rate for the district and service for each engineer assigned to the run for each day per week that the train or trains are scheduled to run, but in no case under the provisions of this Article shall an engineer receive less than full pay for six days per week, provided engineer is available for service on assigned or other runs. This Article shall in no way apply to runs, the daily number of trains composing which are uncertain.

- . Sec. 2. In making up the weekly guarantee of engineers, the mileage so allowed will be paid at the rate applying on the locomotive on which last used.
- Sec. 3. In case engineer assigned to straight-away local freight service, or a series of branch freight runs, established main line turnaround local freight service as specified in Article 6, Section 6, or roustabout service as specified in Article 19, lays off, the sum of the payments to the regular man and extra man, or men relieving him, exclusive of overtime, will equal the weekly guarantee.
- Sec. 4. In computing guarantee for engineers having layover day, the day following such layover day will be regarded as the first day of the week. Engineers not having layover day, Monday will be considered the first day of the week.
- Sec. 5. Local freight assignments will not be canceled unless it is known in advance that run will be discontinued for a period of three (3) days or more. However, in case of restoring run where

assignment, territory or service is changed, it will be considered a new run and this section will not apply; neither will this section restrict the use of assigned local freight engineers in other service on dates their runs do not operate.

Note: The above will be construed as not changing present practice insofar as using engineers out of terminals to make up guarantee where pooled engineers are maintained.

Question: In case engineer not used on assignment account insufficient rest, how should be be compensated for time lost?

Answer: In case engineer not used on assignment account not available under Hours of Service Law, he will be compensated full mileage of his assignment; where not available by reason of marking rest, he will not be compensated for time lost.

What Constitutes a Trip.

ARTICLE 13.

Section 1. An engineer is understood to have reached the terminal of a trip when he reaches the division terminal at which engine crews are usually changed, or arrives at the established terminal of his train, as shown by assignment, and having done so and proceeding further with the same train, or being sent out on another trip or train, he is, in either case, understood to have begun another trip.

The points shown below constitute all division

(Plaintiff's Exhibit No. 1 continued) terminals at which engine crews are usually changed as defined by this Section:

Tracy	Laws
San Francisco	Keeler
Watsonville	Susanville
Junction	Gerber
San Luis Obispo	Dunsmuir
San Jose	Ashland
(Western Div.)	Klamath Falls
Oakland .	Alturas
Roseville	Roseburg
Sparks	Crescent Lake
Imlay	Eugene
Carlin	Portland
Montello	Tillamook
Ogden	Yaquina-
Mina	Marshfield
	San Francisco Watsonville Junction San Luis Obispo San Jose (Western Div.) Oakland Roseville Sparks Imlay Carlin Montello Ogden

Sec. 2. Should it become necessary at any time for operating or other reasons to discontinue or create any main line terminals, changes in terminals will be considered as a proper reason for advertising such runs as are affected for seniority choice of engineers and bulletins will be posted and assignments made as provided in Article 32, Section 10. Other than main line terminals will not be established or maintained for pooled or extra men unless there is enough work for two or more crews between designated points.

Section 3. When track obstructions occur, such as snow blockades, slides, washouts, tunnel trouble, or similar conditions which make it impossible to maintain service from terminal to terminal, tempo-

rary terminals may be established by bulletin notice, specifying the points to be established as temporary terminals, runs and service affected, time effective to be at 12:01 A. M. of date following date of bulletin. If conditions are remedied and line opened within forty-eight hours from time bulletin becomes effective, bulletin will be considered void and engineers compensated same as if bulletin had not been issued. When temporary terminals are thus created, it is understood that agreement provisions applying to terminals shall apply at the temporary terminal.

Overtime and When Paid. ARTICLE 14.

Section 1. An engineer in passenger service making a trip between terminals, exceeding 100 miles, the schedule time between such terminals shall be the limit of a trip, or the average schedule of all passenger trains running in the same direction between such terminals, shall be the limit of a trip for irregular passenger trains. On runs of 100 miles or less, five hours shall be the limit of a trip except as provided in Section 1, Article 6.

When, from any cause, time consumed on any trip exceeds the limits as specified in this section, the engineer shall be paid for all time thus consumed at the rate of 12½ miles per hour.

- Sec. 2. An engineer in freight service making a trip between terminals, 100 miles or less, overtime will begin at the expiration of eight hours; on runs of over 100 miles overtime will begin when the time on duty exceeds the miles run divided by 12½. If actual miles exceed these limits, actual miles will be allowed. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used.
- Sec. 3. Engineers leaving terminals in road service and used in work train service en route are not subject to work train rules.

When engineers en route are used in work train or snow plow service on account of floods, washouts, snowstorms, slides or other unusual conditions, or engineers en route delayed by such conditions, time to be computed as follows:

Continuous time, less time tied up under the law, will be allowed for first 24 hours computed from time required to report for duty. For first 160 hours of each subsequent 24-hour period delayed, engineers will be allowed 200 miles. Should miles run exceed 200, or hours on duty exceed 16 in any 24-hour period, actual miles or hours will be allowed. If trip is resumed during first 16 hours of any 24-hour period held, time will be computed continuously from end of previous 24-hour period, provided that if overtime accrues on the trip, that portion of the overtime due to starting pay at the

(Plaintiff's Exhibit No. 1 continued) expiration of any 24-hour period shall be paid for at the pro rata rate in order that time and one-half for overtime will not be so applied as to increase the rates paid for time computed continuously from end of previous 24-hour period.

It is understood under this rule that the first 200 miles allowed on each 24-hour period will apply on the guarantee as provided in Article 12.

Sec. 4. Engineers handling Southern Pacific Officers' Specials, Annual Inspection trains, examination car, circus or carnival trains, valuation specials, motion picture trains or test trains, may be tied up at other than established division terminals, and time so tied up deducted, provided a minimum of 150 miles, including overtime at road rates, will be allowed for each day engaged in or held for such service and not tied up at terminals. It is understood that delays of less than eight hours at any point other than terminals will not be considered as being tied up, and time so delayed will not be deducted in computing time for road trip of that day. Where trip in such service is made from terminal to terminal, this rule does not apply.

Engineers en route to point where such service begins, or returning to their assigned territory after being relieved from such service, will be paid under this rule.

Test trains as referred to in this Article will be classified as follows:

- (1) Testing.....Air Brakes
- (2) Testing Capacity of Locomotives
- (3) Testing Automatic train control.
- (4) Testing......Automatic block signals

Switching and spotting of circus train equipment and overtime of road trip will be included in arriving at minimum of 150 miles, except at terminals where yard crews are on duty, engineers will receive initial and terminal switching if required to perform switching and spotting of circus at such point.

If engineer runs, for example, twenty miles, picks up circus train, or vice versa, such light movement will be included in regular circus train day.

Engineers handling circus trains will not be run through established division terminals when other engineers are available. If run through, they will start a new day.

Engineer handling circus train will be paid through freight rates according to class of engine and district on which used.

Sec. 5. In assigned passenger service, on a trip of over 100 miles, where two or more train numbers are used on one trip, engineers will be paid overtime on the basis of the combined schedules, plus the dead time shown on time table where train numbers change; provided, that not more than 45 minutes dead time at point where train numbers change shall be added to the combined schedules of the trains. Where the dead time at any point

where train numbers change is in excess of five hours, terminal provisions will prevail and engineers will be considered as beginning a new trip.

- Sec. 6. Engineer's time shall be continuous between terminals, unless tied up under the provisions of the law limiting the hours of service, and when so relieved will, if possible, be tied up where accommodations can be had. If the engineer watches engine, he will be paid for such time at the rate of 12½ miles per hour.
- Sec. 7. In computing overtime on a trip, exceeding 100 miles, actual time table mileage only will be counted; on a trip of 100 miles or less, time table schedules will not be considered.

Initial and Terminal Switching and Delays.

ARTICLE 15.

Section 1. Engineers in passenger service making a trip between terminals, exceeding 100 miles, required to do initial or terminal switching, or delayed at initial station from any cause, shall be paid for all time so consumed at one-eighth of the daily rate per hour, applying to class of engine, service and district, on the minute basis; such switching, and delay to be computed separately from road overtime and paid for irrespective of time consumed on the road. This time not to be counted in computing road overtime.

Sec. 2. (a) An engineer in passenger service making a trip between terminals, exceeding 100

(Plaintiff's Exhibit No. 1 continued) miles, initial delays to be computed from time engi-

neer is ordered to leave with train from passenger depot track on which train is made up and to end with departure of train from passenger depot track

on which train is made up at initial point.

(b) For passenger service, final terminal delay shall be computed from time train reaches terminal station. If road overtime has commenced, initial and terminal delays or initial and terminal switching shall not apply and road overtime will be paid to point of final relief.

- Sec. 3. Engineers in passenger service making a trip between terminals, 100 miles or less, and required to do initial or terminal switching; will be paid for all time so consumed at one-eighth of the daily rate per hour, applying to class of engine and district, on the minute basis. This time not to be counted in computing road overtime.
- (a) When an engineer in turnaround passenger service, either regular or irregular, is required to do initial, terminal or turning point switching, he shall be paid for all time so consumed at one-eighth of the daily rate per hour applying to class of engine and district on the minute basis. This time not to be counted in computing road overtime.
- (b) Final terminal delay in passenger or freight service, after the lapse of thirty minutes, will be paid for the full delay at the end of the trip, at oneeighth of the daily rate per hour on the minute

(Plaintiff's Exhibit No. 1 continued) basis, applying to the class of engine, service and district. However, in freight service, if train is not on overtime on arrival at final terminal, but the overtime period commences before final release, payments accruing at the final terminal up to the period when overtime commences will be allowed at one-eighth of the daily rate, but time thereafter shall be paid on the actual minute basis at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used. If road overtime has commenced, terminal delay, initial and terminal switching shall not apply and road overtime will be paid to point of final relief.

Freight Service.

	Treight Bervice.	
Ex	ample—	
	Required to report at A	7:00 A. M.
	Leave A 7:15 A. M. and run to B	
	(100 miles).	
. *	Arrive B	2:00 P. M.
12	Delayed at final terminal 1 hour, 20	
	minutes.	4 1
	Relieved at B	3:20 P. M.

Compensation—100 miles, plus one hour final delay at one-eighth of the daily rate for period until overtime commences, and for the time thereafter twenty minutes final delay at three-sixteenths of the daily rate per hour.

Sec. 5. Engineers in freight service making a trip between ferminals required to do initial or terminal switching shall be paid for all time so consumed at one-eighth of the daily rate per hour, applying to class of engine, service and district on the minute basis; such time to be computed separately from road overtime and paid for irrespective of time consumed on the road. This time not to be counted in computing road overtime; except that when the number of hours switching is not equal in money value to the sum of the money values of switching hours and road overtime hours, switching time shall not be paid for and the road overtime shall be calculated and paid for the same as if switching had not occurred.

In calculating the time engaged in switching, time will be continuous from time work is begun until it is completed and train is coupled together, except in cases where train is made up on two tracks and not coupled together account insufficient track room to clear other trains, the time between the time switching is completed and train is coupled together will not be calculated as initial switching.

Engineer, after arrival at final terminal, inducted into terminal switching will be compensated under terminal switching rules of agreement from time terminal switching commenced until engine is placed on designated relieving track or engineer is relieved at terminal.

When road engineers entitled under agreement provisions to initial and terminal switching are required, before departing initial terminal or after arrival at final terminal of run, to spot cars of gravel or other maintenance of way material for loading or unloading, in connection with other terminal switching, such service will be compensated for under initial and terminal switching rules of agreement.

Engineer required to perform six hours or more initial switching will be allowed 30 minutes to eat at the initial terminal, computed as part of the initial switching time. In cases where on arrival terminal engineer has been on duty six hours without eating and there is in excess of one hour terminal switching to be performed, he will be allowed 30 minutes to eat computed as part of the terminal switching time.

Example No. 1-

Required to report at A.	7:00 A. M.
'Switches at A until	. 7:30 A. M.
Leaves A	7:30 A. M.
Runs A to B a distance of les	s :-
than 100 miles.	:
Arrives at B	1:30 P. M.
Switches at B until	2:00 P. M.

Compensation—100 miles, plus 30 minutes initial switching and 30 minutes terminal switching at one-eighth of the daily rate.

Example No. 2-

Required to report at A	7:00 A. M.
Switches at A until	9:00 A. M.
Leaves A at 9 A. M. and runs to B	

(100 miles).

Relieved at B. 5:00 P. M.

Compensation—100 miles, plus two hours overtime at three-sixteenths of the daily rate per hour. In this case the money value of the road overtime at three-sixteenths of the daily rate exceeds the allowance of two hour switching at one-eighth of the daily rate.

Example No. 3-

Required to report at A	7:00 A. M.
Switches at A until	9:00 A. M.
Leaves A at 9 A. M. and runs to B	
(100 miles).	
Relieved at B	4:00 P. M.

Compensation—100 miles, plus two hours switching at one-eighth of the daily rate; such allowance being greater than one hour overtime at one and one-half time.

Example No. 4—

Required to report at A 7:00 A. M.

Switches at A until 7:30 A. M.

Runs A to B (100 miles).

Arrives at B 4:30 P. M.

Switches at B one hour.

Relieved at B. 5:30 P. M.

Compensation—100 miles, plus 30 minutes initial switching, one hour road overtime and one hour final terminal switching. All at three-sixteenths of the daily rate per hour.

Note: This on account of initial and terminal switching being absorbed by overtime.

Example No. 5-

Switches at A until 7:30 A. M.

Runs A to B (100 miles).

Arrives at B 2:30 P. M.

Switches at B 30 minutes.

Relieved at B. 3:00 P. M.

Compensation—100 miles, plus 30 minutes initial switching and 30 minutes terminal switching at pro rata rate and not at time and one-half.

Exa	ample No. 6—	•	
• .	Required to report at A	7:00 A.M.	
,	Switches at A until	7:45 A. M.	
	Runs A to B (100 miles).		
	Arrives at B	3:45 P. M.	
	Switches at B 45 minutes.		
	Relieved at B	4:30 P. M.	
	Relieved at B	4:30 P. M	ſ.

Compensation—100 miles, plus 45 minutes initial switching and 45 minutes terminal switching both at three-sixteenths of the daily rate per hour.

E	xample No. 7—			
	Required to report at A	7:00	A. M	ſ.
	Switches at A until	7:30	Λ . Λ	I.
	Runs A to B (100 miles).			١.
	Arrives at B	2;30	P. A	ſ.·
	Switching at B 1 hour, 30 minutes.			
4	Relieved at B	4:00	P. M	I.

Compensation—100 miles, plus 30 minutes initial switching, and one hour 30 minutes terminal switching, both at pro rata hourly rate and not time and one-half rate.

F	Example No. 8—	
	Required to report at A	7:00 A. M.
	Switches at A until	7:30 A. M.
	Runs A to B (100 miles).	
	Arrives at B	3:00 P. M.
	Relieved at B	3:10 P. M.

Compensation—100 miles, plus 30 minutes initial switching at pro rata hourly rate and not at time and one-half.

E	xample No. 9—	: /
	Required to report at A	7:00 A. M.
	Delayed at A	7:20 A. M.
	Runs A to B (100 miles).	
	Arrives at B	2:50 P.M.
*	Switches at B 10 minutes.	
1	Relieved at B	3:00 P. M.

Compensation—100 miles and 10 minutes terminal switching at pro rata hourly rate and not at time and one-half.

Exa	ample No. 10—		* *
	Required to report at A	7:00	A. M.
	Delayed at A	7:20	A. M.
	Runs A to B (100 miles).		1 .
	Arrives at B	2:50	P. M.
	Switches at B 50 mins.		
	Relieved at B.	3:40	P. M.

Compensation—100 miles and 40 minutes road overtime at three-sixteenths of the daily rate per hour. In this case, the money value of the road overtime at three-sixteenths of the daily rate exceeds the allowance of 50 minutes switching at prorata rate.

Ex	ample No. 11——	
. /	Required to report at A	7:00 A. M.
٠	Switches at A	7:20 A. M.
	Runs A to B (100 miles).	
	Arrives at B	2:50 P, M.
-	Switches at B 50 mins.	
	Relieved at B.	3:40 P. M.

Compensation—100 miles, 20 minutes initial and 50 minutes terminal switching at pro rata rate and not at time and one-half. In this case, the allowance for switching at pro rata rate exceeds the money value of road overtime at three-sixteenths of the daily rate.

- Sec. 6. For freight service, final terminal delay shall be computed from time the engine reaches designated main track switch connection with the yard track. When freight train on arrival at final terminal of run is required to come to stop before reaching designated switch from which terminal delay is computed on account of a preceding train standing between them and the designated switch, terminal delay will be computed from time train comes to stop behind the train that is blocking them.
- Sec. 7. Where hostlers are not provided to take engines to and from train, engineers will be allowed not less than the actual mileage made between yard, depot and roundhouse. (Where distance is

(Plaintiff's Exhibit No. 1 continued) one mile or over). This not to apply when engineer is on overtime as specified in Section 2 (b) this Article.

Rates of Pay for Light Engines and Pilots.

ARTICLE 16.

- Section 1. When engines are run over the road light, engineers will be paid full freight rates, including allowed mileage as shown in Article 3, except when used in freight or passenger service over part of trip and balance run light, will be paid on the same basis as the crew which is helped. The overtime basis for the rate paid will apply for the entire trip.
- Sec. 2. Engineers acting as pilots will be compensated per class of locomotive and service, the same as if handling the engine on which pilot service is performed.

1913 Mediation Settlement of Electrical Question.

ARTICLE 17.

- Section 1. The Railroad concedes to the engineers the right to negotiate, maintain and protect, under the protective laws of their organization, without segregation of committees, schedules covering rates of pay, rules of seniority and working conditions governing engineers in both steam and electric service.
- Sec. 2. Portions of the Pacific Lines in Alameda County and in Oregon that have been electrified,

(Plaintiff's Exhibit No. 1 continued) and any portion of the Pacific Lines that may hereafter be electrified and any new lines constructed for operation in connection therewith, will not be segregated in so far as it affects the rights of engineers in either steam or electric service, or, of the system General Committees to legislate for and represent such employees, and the rates of pay and working conditions provided for in steam service shall apply, subject to agreement provision. None of the above to apply to street car service.

Sec. 3. Before an engineer in the exercise of his seniority rights is assigned to runs in the electric service from steam service, or vice versa, the Company shall have the right to establish and require such tests, and standard of efficiency, as it may deem necessary to satisfy itself of the competency of the engineer for the position desired in order to fully provide for the safety of operation of its trains. It is agreed that an engineer who has . had experience in freight service only, going into electric service and remaining therein a number of years, desiring to exercise his seniority in fast steam passenger service, may be required to qualify. by first going into steam freight or local passenger service, or both, on the same district for a reasonable period.

Award Supplement to General Order 27.

Sec. 4. Wherever electric or other power is installed as a substitute for steam, or is now oper-

(Plaintiff's Exhibit No. 1 continued) ated as a part of their system on any of the tracks operated or controlled by any of the railroads, the locomotive engineers shall have preference for positions as engineers or motormen, and locomotive firemen for the positions as firemen or helpers on electric locomotives; but these rates shall not operate to displace any men holding such positions as of April 10, 1919.

Note: The inclusion of this Section (Article VI of Supplement No..24) by the Company, was wholly account decision Case No. 27/425.

Local Freight and Mixed Service. ARTICLE 18.

Section 1. Engineers handling four or more freight cars, in conjunction with overland passenger service, shall be paid full freight rates for the entire trip.

- Sec. 2. Engineers handling two or more freight ears, in conjunction with branch or local passenger service, shall be paid full freight rates for the entire trip.
- Sec. 3. Engineers handling one or more local freight cars, picking up and setting out or transferring freight to and from car en route, in conjunction with branch or local passenger service, shall be paid full freight rates for the entire trip.
- Sec. 4. In addition to assigned local freight trains, engineers handling freight or mixed trains

on which 5,000 pounds, or over, L. C. L. freight, is loaded, or unloaded, per trip, or that does industrial or station switching between terminals, will be paid local freight rates.

Movements made in connection with loading or unloading, picking up or setting out cars for stock to be loaded or unloaded, or setting out and spotting cars from own train, and picking up cars into own train, and the respotting of cars disturbed as result of either of the above movements, is not industrial or station switching as mentioned in above paragraph of this Article.

Sec. 5. Where, under schedule rules or accepted practices, a part of the crew receives local freight rates, the engineer will receive not less than the local freight rate.

On districts where there is no local freight differential applying to conductors or trainmen, and an engineer in through freight service is required to perform switching at stations en route that would entitle frain crew to local freight rates, were there a local freight differential, engineer will be allowed local freight rates.

Conductors and Trainmen's Local Freight Rule.

Crews in through or irregular freight service required to set out or pick up cars at more than four stations, to load or unload freight, to load or unload stock not handled in their train, to put up coal or do station switching between terminals of

tion 4?

(Plaintiff's Exhibit No. 1 continued) their run, shall be allowed local freight rates of pay for the entire trip.

The following will not be considered local freight work under this rule: Setting out disabled cars; picking up or setting out water cars for train engine use only; unloading not to exceed 1000 lbs. perishable freight on the trip.

"Station Switching" is defined as placing cars af stations on industrial tracks when one or more switches have to be made to properly place cars set out or handled.

Refer to Article 18, Sec. 5, Engineers' Agreement.

Question: Engineer handling through freight train, picks up several cars at station en route, weighs them, after which these cars are taken into his train and handled to another station, where they are set out. Does the weighing of cars constitute "station switching" as specified in Article 18, Sec.

Answer: No; cars having been handled in his own train, weighing of same does not constitute station or industrial switching.

Question: Engineer helps through freight train and during time being helped, train crew pick up and set out at three points. Subsequent to the extra helper being cut out, this train picked up and set out at two additional points, resulting in crew of train being allowed local freight rates. Is the extra helper engineer entitled to local freight rates?

Answer: No; during period this extra engineer was helping this train no service was performed that would change classification of same, and the extra helper engineer should be compensated at through freight rates.

Question: Is engineer in through freight service entitled to local freight rates when required to move cars standing at station en route from one track to another at such station to enable him to get his train into clear?

Answer: No.

Roustabout Service.

ARTICLE 19.

Section 1. (a) Engineers assigned to perform switching, assembling and distributing ears may be run in and out and through regular assigned terminals without regard to rules defining the completion of trips. Time to be computed continuously from the time required to report for duty until released at home or district terminal. Local freight rates will apply according to class of engine and district on which used. One hundred miles or less, eight hours or less, to constitute a day. Assignments will be confined to a radius of 100 miles or if assignment should be in excess of 100 miles, overtime will be paid on basis of eight hours. Overtime shall be paid for on the minute basis at an hourly rate of three-sixteenths of the daily rate,

(Plaintiff's Exhibit No. 1 continued) according to the class of engine or other power used.

- (b) Assignments of engineers to this service will be made by bulletining vacancies or new runs in accordance with rules in effect. Bulletin will designate one home terminal and time engineer will begin work.
- (c) Engineers required to go beyond limits of assignment will be allowed a minimum of 100 miles at the rate applying on the locomotive in the service and on the district where performed for each time so used. Time thus consumed to be excluded in computing overtime worked on regular assignment.

The above to apply to points listed below without prejudice to existing rules:

Coast Division-Santa Cruz.

Stockton Division—Merced, Modesto, Turlock. Lodi.

San Joaquin Division-Porterville, Oxnard.

Sacramento Division-Marysville.

Los Angeles Division—Brawley, El Centro, Calexico,

Western Division-Santa Rosa,

- 1. Engineers will be guaranteed mileage of their assignments, but this does not change present basis of applying weekly guarantee.
- 2: Passenger service, helper service and work train service will not be included in roustabout assignments.

3. Following example will illustrate what is intended by language reading "Engineer required to go beyond limits of assignment will be allowed a minimum of 100 miles":

Engineer assigned to perform switching at Brawley and work between that point and Niland, including West Moreland Branch, home terminal Brawley, time to begin work 7 A. M., required to make trip Niland-Indio or go beyond Niland or Brawley in any class of service will begin a new day and will be paid under the rules governing class of service performed.

This example does not imply that engineer may not be assigned to work both ways out of Brawley, but in every case the limits of assignments specified in bulletin will govern.

Engine Breaking Down.

ARTICLE 20.

It will be understood that where a relief engine is sent to take the place of a disabled engine in passenger service the engineer beginning the trip is entitled to take the relief engine and complete the trip.

Making Repairs to Engines.

ARTICLE 21.

Engineers on branch runs, or other portions of the road where engines do not run into round(Plaintiff's Exhibit No. 1 continued) houses where machinists are located, and are obliged to make such repairs on engines as do not appertain to the duties of an engineer, shall be paid for all time thus employed at 77 cents per hour. When work is done engineer will make list of same on trip

Damage to Engines.

cards to be approved by the Master Mechanic.

ARTICLE 22.

Charges of carelessness against engineers causing damage to engines or other company property will receive full and fair investigation and when such damage is found to be due to defective material, or workmanship, or where there is reasonable doubt as to the eause of such damage, engineers will not be held responsible.

Work of Trainmen.

ARTICLE 23.

Engineers will not be required to do work that should properly be included in the duties of trainmen.

Pay for Stock Killed.

ARTICLE 24.

Engineers will not be required to pay for stock killed, nor will fines for breakage or damage of any kind be imposed on engineers.

(Plaintiff's Exhibit No. 1 continued) Timetable Mileage Allowed.

ARTICLE 25.

Section 1. In computing mileage of a run, actual timetable mileage only will be counted, excepting on runs less than 100 miles and as specified in Articles 3 and 12.

Time Claimed and Not Allowed.

Sec. 2. When time claimed on trip cards is not allowed, the engineer interested will be promptly notified by the Superintendent and given reasons why said time should not be allowed.

Statement of Facts.

Sec. 3. When claims are presented to the Superintendent by the Local Chairman, the latter will submit a statement of facts in the case and refer to schedule rule or settlement on which the Organization bases its claim. If the claim is not allowed by the Superintendent, he will furnish the Local Chairman with a statement of facts and reasons why claim is not allowed. If conference is desired by the Organization, same will be granted without unnecessary delay. If claim is not disposed of in conference, the Superintendent, or his representative, and the Local Chairman should prepare a joint statement of facts for the information of the General Manager, or his representative, and the General Committee, Brotherhood of Locomotive Engineers. If Superintendent and Local Chair(Plaintiff's Exhibit No. 1 continued)
man fail to agree on a joint statement of facts,
they will prepare separate statements, setting forth
their contentions. It is understood no argument
should be used in the statement of facts.

Adjustment of Similar Claims.

Sec. 4. Where settlements are made in adjustment of certain claims, other claims that are of similar nature can usually be adjusted on the same basis, and so far as similarity of conditions will permit, this will be done.

Answering Correspondence.

Sec. 5. Correspondence will receive attention of Officials and reply made as promptly as possible.

Leave of Absence and Transportation for Committeemen.

Sec. 6. Committeemen representing employes governed by the provisions of this agreement will be granted leave of absence and furnished transportation without unnecessary delay.

Held for Service.

Engineers held at any point for special service will be paid one day's pay at the minimum rate of the division and for service so held for each calendar day on which no service is begun. When held at home terminals, the time to be computed from

(Plaintiff's Exhibit No. 1 continued)
the time he should have been sent out in his regular turn. Engineer on assigned run so held shall
receive not less than if not held off his run.

Court Service, Inquests, Fuel and Safety Meetings, Boards of Inquiry and Investigations.

ARTICLE 27.

Section 1. Engineers ordered into court service as witnesses in the service of the Company, or to attend coroner's inquest, safety meetings, fuel meetings, boards of inquiry, or investigations, shall be compensated as follows, with necessary expenses when away from home terminal. Expense account to be approved by the department under which the men in question serve. If required to lose time engineers shall be paid not less than they would have earned had they been used in regular turn with a minimum average of not less than \$6.33 per day. If no time is lost but engineers are required by the Company to deadhead from terminal to another point or from some point to terminal before beginning day's work, or after completion of same, or on layover day, for any of the above purposes, they will be paid \$6.33 per day in addition to compensation for service performed on that date.

Sec. 2. If ealled for the purpose of giving depositions at home terminal on regular layover days and go out in regular turn on regular run, without loss of time, engineers will be paid for actual time consumed at 69 cents per hour,

Sec. 3. Engineers will not be called for any other service while being held off for court service.

Note: Regarding investigations: The provisions herein will apply when man is found not at fault.

Deadhead Service.

ARTICLE 28.

Engineers deadheading on Company's business (or in case of an engineer transferred from one division of the road to another by request of the Company, or learning the road) on passenger trains, will be paid for the actual mileage at 6.44 cents per mile; and for deadheading on other trains at 7.09 cents per mile; provided, that a minimum day at the above rate will be paid for the deadhead trip if no other service is performed within twenty-four (24) hours from time called to deadhead. Deadheading resulting from the exercise of seniority rights or in the adjustment of miles under Article 32, Section 6, Par. D, will not be paid for.

Question: Engineer called to deadhead to make 16 hour relief. Not needed and returned deadhead to terminal. In what position should be placed on board on return to terminal?

Answer: At foot of list in order of his arrival.

Question: (a) In case where engineers cut off list are transferred from one seniority district to another for temporary service, are they entitled to payment for time learning road on division to which temporarily transferred?

Answer: Men so transferred, if cut off working list on division from which transferred, not entitled to payment for time learning road or deadheading.

Question: (b) Engineers taken from working list and transferred?

Answer: Such men are entitled to deadhead payment; also time learning road.

Question: In case where extra list is reduced under Article 32, Section 6 (a) and one or more of men cut off list is holding assignment or filling vacancy at outside point, is the man, or men, deadheaded out to furnish relief, entitled to payment for deadheading?

Answer: Yes; however, if it is known that men cut off list will return to terminal within four days from 12:01 A. M., date list is cut, no relief will be furnished, and man cut off will continue in service until return to terminal.

Question: Vacancy occurs on outside passenger run; account no extra passenger engineers available, pool freight or extra engineer is used to fill the vacancy. Later an extra passenger engineer becomes available and displaces the pool freight or extra engineer filling the vacancy. Are both engineers entitled to deadhead mileage?

Answer: No; pool freight or extra man first sent out to fill vacancy is entitled to deadhead payment both going to and returning when displaced by extra passenger engineer. The extra passenger (Plaintiff's Exhibit No. 1 continued) engineer, however, should not be paid for dead-heading either going or returning when displaced by regular engineer returning.

Question: Where engineers make application for, and are assigned to run operating over a part of a seniority district with which they are not familiar, making it necessary for them to learn the road prior to taking service on run, shall they be compensated for time engaged in learning the road?

Answer: No; when engineer is required to learn a portion of the road with which he is not familiar, he will do so on his own time.

Motor Car Service.

ARTICLE 29.

- Section 1. Engineers making application for motor car service and those qualifying as motormen will retain their rights in steam service, with the understanding that having accepted the motor car service they will remain in such service until they can be relieved by an engineer who has qualified for such service.
- Sec. 2. Rates and rules applying to steam service will apply to motor car service. Overtime in passenger service at one-eighth of the daily rate.
- Sec. 3. When additional motor cars are put into service, or vacancies occur in motor service, engineers may make application for same and will be assigned to service according to seniority, ability

(Plaintiff's Exhibit No. 1 continued) and qualification, the qualifying features to be decided by the Superintendent and Master Mechanic.

Engineers' Call Order.

ARTICLE 30.

Section 1. Engineers will be called for all service as nearly as practicable one hour and thirty minutes before the time required to report for duty. Caller will be provided with a book in which shall be shown the time the engineer called shall report for duty and the time he is to leave. The engineer shall sign the book and register the time at which called.

Note: When engineer standing first out cannot be found or who lays off at time call is made for deadhead trip to outside point, the engineer standing next out shall be sent and paid for deadheading in both directions. When the engineer who stood first out is found or reports, he will be sent to outside point without deadhead compensation in either direction.

Question: What method should be followed in determining whether or not engineer may be used for additional service after making one or more trips?

Answer: Forecast should be made by taking the average time consumed for a period of A5 days for the train (if scheduled), or for trains handling similar traffic (if an extra), running in the direction and between the points trip is to be made, to which should be added the time engineer is required to be on duty before leaving, and the average time

(Plaintiff's Exhibit No. 1 continued) consumed in reaching roundhouse where engineer is relieved, exceptions being when abnormal conditions

prevail such as severe storms, washouts, and where interruptions of the line could be reasonably expected.

Sec. 2 (a) Engineers assigned to regular runs will be run first in first out of all terminals between which such runs are bulletined to run, and on runs to which such engineers are separately assigned. If schedules are disarranged so this cannot be done, they will be run first in first out until returned to regular runs.

Engineers in regular pooled freight service will be run first in first out of all terminals of their assignment. Only a sufficient number of engineers will be assigned to a pool to handle the business with promptness and dispatch.

Question: How should extra engineer be handled who is called to fill vacancy on pool freight list or is augmenting such list?

Answer: He will remain in pool freight service. taking turn out with other engineers in pool until return to terminal, where assigned to extra list. However, should extra dist be maintained at an away-from-home terminal and engineers thus assigned are run to home terminal, where extra list is maintained, they will, upon arrival at said home terminal, be promptly deadheaded to their exten list or after required rest period, without runaround penalty. If there are no engineers available at such points who are entitled to the work, en(Plaintiff's Exhibit No. 1 continued) gineers may be returned to their assigned extra board in service.

Sec. 3. (a) Engineers assigned to extra list shall in all cases run first in first out from the terminal where assigned, filling all vacancies in freight service, helper or other service that may be assigned to such extra men, except that vacancies for a period of 10 days or more in road service may be filled after the 10th day, by the senior qualified engineer in freight service making application, but in passenger or mixed service where no extra passenger engineers are available, the senior qualified engineer making application will, after the 10th day, be assigned at the home terminal of the run, to fill the vacancy; if no application is received the first pooled freight engineer having necessary experience will be used. (Two years' experience in actual road service and sixty days on seniority district where vacancy occurs). In case the senior qualified engineer is not available, he will be assigned to fill the vacancy when he applies for it (provided the run has not been taken by an extra passenger engineer), and no deadhead time, or time lost, will be allowed for transferring men to or. from runs of preference.

Note: It is understood that the term "senior qualified engineer in freight service" will include qualified engineers on extra lists, but will not include engineers in work train service or helper service; however, engineers assigned to helper service.

(Plaintiff's Exhibit No. 1 continued) ice are privileged to make application and fill vacancies under this Section in mixed train and passenger service.

Note: An engineer taking a run under this section will not be permitted to vacate same, unless displaced under the rules or assigned by bulletin to another run,

Note: Two years' experience as referred to is interpreted to mean an engineer will be required to be on the board ready for service not less than 610 days following promotion before he will be considered eligible for passenger service.

Should engineer perform yard service during this period, 40 days of such yard service will be credited to the engineer in qualifying for passenger service under this rule.

Note: When an engineer filling ten-day vacancy under Section 3 (a), Article 30, Engineers' Agreement, lays off, the senior engineer making application for vacancy will be assigned to same, and the engineer who laid off while filling ten-day vacancy, on reporting for duty, will be required to resume service on the vacancy, providing he has not been displaced by a senior engineer or by a regular engineer resuming duty on his assignment.

Question: Do requirements of Section 3 (a), Article 30, as to experience necessary for engineers fixing vacancies in passenger service, apply to vacancies bulletined for seniority choice as well as temporary vacancies?

Answer: Yes.

Question: In case where passenger vacancy is to be filled by pool freight engineer, and there is a "space" standing first out on pool freight board at time of call for passenger service, should the extra engineer standing for the pool freight "space" be called or should the next qualified pool engineer be used.

Answer: Under above circumstances, first extra engineer who is qualified for passenger service should be called and used; if there are no extra engineers on board who are qualified for passenger service, "space" will be runaround and next pool freight engineer who is qualified for passenger service used.

Question: In case no extra passenger engineers available and pool freight or extra engineer is used in passenger service (except in filling vacancy as per Article 30, Section 3), how should be be handled on arrival at outside terminal?

Answer: Will be marked up on pool freight list and take his turn in that service.

(b) In filling vacancies in passenger or mixed service for a period of ten days or over, on Portland Division, where no extra passenger lists are maintained, the senior engineer making application for the run shall be assigned to fill the vacancy.

Temporary Vacancies In Yard Service

* (c) When there are no extra engineers who are restricted to yard service available, temporary va-

(Plaintiff's Exhibit No. 1 continued)
cancies in this service will be filled by engineers
from the extra list of engineers not restricted, except temporary vacancies of ten (10) days or more,
after the tenth day may be filled by the senior
qualified engineer making application. Engineers
restricted to yard service will have preference in
filling vacancies in yard service as outlined in Section 3 (b), Article 32. Deadhead time or time lost
account of men transferring from one yard to another under this section will not be paid for.

Extra Passenger List.

- Sec. 4. (a) Engineers assigned to the extra passenger list, when available, shall do all extra passenger work assigned to such list, and shall run first in first out, but when filling vacancies shall hold such vacancies until regular man returns to duty or run is claimed by some engineer under the provisions of Sections 10 and 12 of Article 32, it being understood in all cases when extra men replace regular assigned engineers in any service, they shall receive pay and overtime on same basis as such assigned men.
- (b) Should it be necessary to use a pooled engineer on an assigned run account no other men available he will take the conditions of the regular assignment and on return to terminal shall immediately go on the pool list, and should it again be necessary to send out a pooled man on the assign-

(Plaintiff's Exhibit No. 1 continued)
ment for the above reason same conditions will
apply.

In case it is necessary to send pooled engineer to take an assignment with terminal of run away from his headquarters because of no other men available, he will take the conditions of the regular assignment, but must be relieved and returned to his headquarters as soon as extra men are available.

Above will not apply to pooled engineers used in switching service.

Question: Should pooled freight engineer filling temporary vacancy in passenger service on run operating from outside point to district terminal and return, be displaced at the district terminal before completion of day's assignment by extra passenger engineer who has become available?

Answer: No; pool freight engineer should complete day's assignment. The extra passenger engineer should deadhead to home terminal of run and make displacement at that point.

Order for Calling Engineers.

(c) When call is made for more than one engineer for the same train, one or more of them to doublehead; help or deadhead on the train, the call shall be made first, to man the train; second, to doublehead; third, to help; and fourth, to deadhead; using them first in first out. Upon their arrival at terminal they shall register in in accordance

(Plaintiff's Exhibit No. 1 continued) with their standing at the time call was made at the initial terminal.

Local Agreements.

(d) Local Committees of Brotherhood of Locomotive Engineers and local officials may enter into local agreements as to the filling of temporary vacancies in passenger, freight or yard service. Such local agreements shall be submitted to the General Manager, or his representative, and the General Chairman, Brotherhood of Locomotive Engineers, for approval, and if approved, shall become effective on a date to be specified by the General Manager and General Chairman, and will remain in effect until changed by the same authority.

Runarounds.

Sec. 5. Engineers in like service, who are run around through no fault of their own, at any terminal shall be allowed 50 miles and stand first out; if not called for service within the limit of eight hours, 100 miles will be allowed and stand last out. Runarounds will be paid at the rate applying to engine he should have been used upon.

Question: Engineers assigned to runs with terminal at outside point, take their engine to district terminal, which is off their assigned territory, for boiler wash, or other necessary attention, after which they return with engine to their assignment. Is it permissible to couple this light engine into

train out of district terminal on return movement, without runaround penalty to engineers standing first out at such terminal?

Answer: Yes; provided train into which engine is coupled does not require and would not be given help out of such terminal.

Question: In case an engineer is runaround by three different engineers within a period of eight hours, is he entitled to 50 miles for each runaround, or a total of 150 miles?

Answer: No; engineer runaround as above and not called within the limits of eight hours, would be entitled to 100 miles and go "last out".

Question: Engineer assigned to through passenger service is called for train to which assigned, train running in two sections, and account power distribution, regular assigned engineer used on the second section and pool freight engineer used on first section. Is assigned engineer entitled to runaround?

Answer: This engineer having been called for service to which assigned and necessary change of power resulting in his being used on second section, does not entitle him to runaround.

Question: In case it is necessary to use an assigned engineer with layover at outside point, for service on his layover day, is extra engineer standing first out at district terminal, where extra list is maintained, entitled to runaround?

Answer: The extra man not being at point out of which regular engineer was used, is not entitled to runaround.

Special Passenger Service.

Sec. 6. It is understood under this Article, that the Company has the privilege to use any engineer in special passenger service.

Note: The runaround penalty is not waived by the use of engineers in special passenger service.

Called and Not Used.

Sec. 7. When engineers are called for any service and not used, they shall be allowed a minimum of two hours at 69 cents per hour, and at same rate for each additional hour held over two hours.

When call is annulled and no instructions given engineer with respect to further duty, the first call will be paid for in accordance with this Section, the allowance depending upon whether or not any service is begun. However, if engineer is not released, and instructed to come on duty again later for service originally called for, or some other service, or service is changed while engineer is on duty, departing in service other than that originally called for, time of trip on which he departs will be computed from time coming on duty on original call.

(Plaintiff's Exhibit No. 1 continued) Held Away From Home Terminal

Sec. 8. (a) Engineers will be allowed as much of their layover as possible at terminals where shops are located or where majority of the engineers on the runs reside, without detriment to the service or expense to the Company.

(b) Engineers in pool freight, extra passenger, and in unassigned service held at other than home terminal will be paid continuous time for all time so held after the expiration of 16 hours from the time relieved from previous duty, at the regular rate per hour paid them for the last service performed. If held 16 hours after the expiration of the first 24-hour period, he will be paid continuous time for the next succeeding 8 hours, or until the end of the 24-hour period and similarly for each 24-hour period thereafter. Should an engineer be called for duty after pay begins, time will be computed continuously, provided that, if overtime accrues on the trip, that portion of the overtime due to starting pay at the expiration of the 16-hour period instead of at the time actually required to report for duty shall be paid at the pro rata rate, in order that time and one-half for overtime will not be so applied as to increase the rate paid for time growing out of the held away from home terminal rule.

Example-

Time begins at 2 A. M.

Required to report for duty at A. 6 A. M.

Runs A to B-100 miles, 6 A. M.-1 P. M.

Relieved at B. 1 P. M.

Compensation—As result of computing time from expiration of 16-hour period from time relieved from previous duty, instead of at the time actually required to report for duty, engineer would be entitled to 3 hours at pro rata rate and time and one-half would not apply.

(c) When layover of pooled engineers away from home terminal is excessive the matter will be corrected by the Superintendent.

Rest Rule.

- Sec. 9. (a) No engineer shall be required to be on duty when he needs rest, nor shall an engineer be permitted to run on the road when his physical ability has been fairly taxed by previous service before he has had needed rest.
- (b) When an engineer feels he needs rest he must so indicate in writing on the roundhouse register at the time he registers his arrival, or by wire, if on the road between terminals, giving the number of hours he requires, which must be either eight, ten or twelve hours, but in no case to exceed 12 hours; the hours to be considered from time of registering in until time called. After marking rest

(Plaintiff's Exhibit No. 1 continued) the hours as indicated on register will not be changed.

Extra Lists-Where Maintained.

Sec. 10. Ordinarily extra lists will be maintained only at division terminals and effort will be made to fill all vacancies or new runs, not otherwise provided for, from these lists. When necessary, extra lists may be established at outside points where assigned runs terminate, or at an assigned helper station, but they will be maintained only for such time as the earnings of engineers thereon average the equivalent of six hundred miles per week. Such extra lists will not be established for less than ten days.

A one man extra list may be maintained at any point. Engineer on such one man extra list will be guaranteed the equivalent of 600 miles per week during period such extra list is confined to but one man. In computing guarantee, Monday will be considered as first day of week, and in computing periods of less than one week, pro rata of guarantee for number of days assigned to extra list will be allowed.

In making up guarantee, mileage so allowed/will be paid at the rate applying to the locomotive on which last used. Mileage deadheading to and from such extra list will be included in computing guarantee.

When such extra list is discontinued and extra man protects list beyond 12 o'clock noon, that day will be included in computing guarantee; likewise, when man is sent out of service on one man extra list, reports and is placed on extra list prior to 12 o'clock noon, that day will be included in computing guarantee.

Where extra engineers are assigned to an outside point as provided above, such point will be considered as their home terminal and they will be used to fill vacancies or perform extra work assigned to such extra list. If engineers thus assigned are run to division terminals in extra service where extra list is maintained, they will, upon arrival at a division terminal be promptly deadheaded to their assigned territory or run back on light engine after required rest period without runaround penalty. If there are no engineers available at such points who are entitled to the work, engineers may be returned to their assigned territory in service.

District Assignment of Engineers.

ARTICLE 31.

Section 1. Engineers in through passenger service will be assigned as follows:

Between Portland and Roseburg Via Roseburg and Ashland Siskiyou Ashland and Dunsmuir Line Portland and Eugene Via Eugene and Klamath Falls Cascade Klamath Falls and Dunsmuir Line. Dunsmuir and Gerber. Gerber and Sacramento-Oakland Ogden and Carlin Carlin and Sparks Sparks and Roseville Roseville, and Oakland Oakland and Fresno Fresno and Bakersfield Bakersfield and Los Angeles San Francisco and San Luis Obispo San Luis Obispo and Santa Barbara Santa Barbara and Los Angeles Los Angeles and Yuma Yuma and Tucson (via Gila) Yuma and Tucson (via Phoenix) Tucson and Lordsburg Lordsburg and El Paso

Sec. 2. Engineers assigned to main line pooled. freight service will be assigned as follows:

Between Brooklyn and Eugene Eugene and Roseburg Roseburg and Ashland Ashland and Dunsmuir (Plaintiff's Exhibit No. 1 continued)
Eugene and Crescent Lake
Crescent Lake and Klamath Falls
Klamath Falls and Alturas
Alturas and Wendel
Klamath Falls and Dunsmuir
Dunsmuir and Gerber
Gerber and Roseville
Ogden and Carlin (with layover at Montello)
Carlin and Imlay

Imlay and Sparks Sparks and Roseville Roseville and Tracy-Fresno Fresno and Bakersfield Bakersfield and Los Angeles Oakland and Roseville-Tracy-San Jose- San Francisco San Francisco and Watsonville Junction Watsonville Junction and San Luis Obispo San Luis Obispo and Santa Barbara Santa Barbara and Los Angeles Los Angeles and Indio Indio and Yuma Yuma and Gila. Yuma and Phoenix Phoenix and Tucson Gila and Tucson Tucson and Lordsburg Lordsburg and El Paso

Sec. 3. Should it become necessary at any time to make changes in assignments as outlined in Sections 1 and 2, this Article, it will be done in accordance with Section 2, Article 13.

Sec. 4. When it is necessary account no other engineers available to use engineers assigned to regular runs or pooled freight service beyond the limits of their assignments, they will, upon arrival at a division terminal, be promptly deadheaded to their assigned territory or run back on light engine after required rest period without runaround penalty. If there are no engineers available at such points who are entitled to the work; engineers may be returned to their assigned territory in service.

Seniority of Engineers.

ARTICLE 32.

Section 1. All main lines and connecting branch lines (not otherwise specified) shall be divided into seniority districts as relates to seniority rights of engineers as follows:

Western District.

Between Oakland and Sacramento, Oakland and Tracy, Oakland and San Jose and Santa Clara and Redwood.

Stockton District.

Between Tracy and Fresno, Tracy and Sacramento, and Lathrop and Fresno.

(Plaintiff's Exhibit No. 1 continued)
Sacramento District.

Between Sacramento and Red Bluff, Davis and Red Bluff, Sacramento and Sparks, including all branch lines terminating at Sacramento, including the Placerville Branch.

Sparks District.

Between Sparks and Carlin, Hazen and Keeler.

Ogden District.

Between Carlin and Ogden.

Shasta District.

Between Red Bluff and Ashland, Black Butte and Klamath Falls.

Portland District.

Between Portland and Ashland, Eugene and Klamath Falls.

Coast District.

Between San Francisco and Santa Barbara.

San Joaquin District.

Between Santa Barbara and Los Angeles, Los Angeles and Fresno and Kerman, Mojave and Owenyo.

Los Angeles District.

Between Los Angeles and Yuma, including all branch lines terminating at Los Angeles.

Tueson District.

Between Yuma and El Paso, via Gila and Lordsburg, including Nogales Branch, and Globe Division of the former Arizona Eastern Railroad, Bowie to Miami (including branch lines) and the Cochise-Gleeson, Branch.

Phoenix District.

Former Phoenix Division of the former Arizona Eastern Railroad, Hassayampa to Christmas, including branch lines Phoenix to Maricopa and Casaba.

- Sec. 2. *(a) When a railroad system, or portion thereof, is leased or absorbed by the Southern Pacific (Pacific Lines) the seniority rights of the engineers found employed thereon shall not be disturbed unless and until so determined by the General Committee of Adjustment and negotiated with the Management.
- (b) When it becomes necessary to readjust the service of the merged roads on account of runs extending over other districts or a part thereof, such runs shall be assigned as provided for in Section 15, this Article.
- (c) Should this rule be impracticable on account of insufficient mileage in roads merged, engineers found employed thereon will take seniority rights on the entire district to which added in accordance with seniority date in service as an engineer on absorbed road.

(Plaintiff's Exhibit No. 1 continued) Seniority Rule.

Sec. 3. (a) Rights of engineers to preference of runs shall be governed by seniority in service of the Company as engineers and seniority of the engineer as herein defined shall date from first service as engineer on the district where seniority rights are claimed, except as provided in Sections 3 (b), 5 (c), 5 (g), 5 (i) and 5 (j), this Article.

Yard Service Seniority Rule.

(b) Engineers who are restricted to yard service and whose names appear on permanent yard engineers' seniority list as of October 1, 1918, shall have preference for all yard positions in order of their seniority and shall have preference over all engineers who are qualified for road service.

Engineers restricted to yard service under this section, who are eligible and who desire to go into road service, will take seniority from date of first service after qualifying for road service. When temporarily cut off on account of reduction in the road list, they will be permitted to be returned to yard service and to exercise therein their previous yard seniority.

Road engineers permanently disabled physically, or road engineers permanently restricted to yard service by the Company, may exercise their seniority in yard service over engineers not restricted, but cannot displace engineers whose names appear on

(Plaintiff's Exhibit No. 1 continued)
permanent yard engineers' seniority list as of October 1, 1918. This in no way affects the application
of Section 12 (c) of this Article.

Assignment of Engineers.

Sec. 4. (a) The Company will not assign any more engineers to each district or run than is necessary to move the traffic with promptness.

(b) Where there is a surplus of engineers for the business of the district, the oldest engineer in point of seniority shall have the preference for employment.

Augmenting and Reducing Extra Lists.

(c) In the matter, of augmenting and reducing extra lists and deadheading engineers resulting therefrom: In cases where the Company moves engineers from one point to another to augment a list for a rush period or for a short period of time, the engineers so transferred should be paid for deadheading and when their services are no longer required at the point to where sent the same engineers should be returned and compensated for deadheading to the point or station where originally stationed.

In the matter of reduction of extra lists account slack business: This is done at the request of the engineers, and the changing of engineers from one point to another, as the result of a reduction of the extra list, pay for deadheading will not be made.

(Plaintiff's Exhibit No. 1 continued) Hiring and Promotion.

Section 5. (a) Firemen shall rank on the Firemen's roster from the date of their first service as fireman or hostler, when called for such service, except as provided in Section 5 (k), and when qualified shall be promoted to positions as engineers in accordance with the following rules:

- (b) Firemen shall be examined for promotion according to seniority on the Firemen's roster, and those passing the required examination shall be given certificates of qualification and when promoted shall hold their same, relative standing in the service to which assigned.
- or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used establishes shall go to the credit of the senior eligible fireman or engineer to be hired, provided the engineer to be hired is available and qualifies within thirty days. As soon as the senior fireman or engineer to be hired is available, as provided herein, he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman to be promoted or engineer to be hired been available and the junior fireman not used.

Note: Qualification, as referred to herein, is not intended to include learning of road or signals.

- (d) As soon as a fireman is promoted he will be notified in writing by the proper official of the Company of the date of his promotion, and unless he files a written protest within sixty days against such date he cannot thereafter have it changed. When date of promotion has been established in accordance with regulations, such date shall be posted and if not challenged in writing within sixty days after such posting no protest against such date shall afterwards be heard.
- (e) No fireman shall be deprived of his right to examination nor to promotion in accordance with his relative standing on the fireman's roster, because of any failure to take his examination by reason of the requirements of the Company's service, by sickness, or by other proper leave of absence; provided that upon his return he shall be immediately called and required to take examination and accept proper assignment.
- (f) The posting of notice of seniority rank, as per Section 5 (d), shall be done within ten days following date of promotion and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank.
- (g) Firemen having successfully passed qualifying examinations shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers.

back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

(h) On a seniority district where firemen are required to fire less than three years, all engineers will be hired;

If required to fire 3 and less than 4 years, 1 promoted and 1 hired;

If required to fire 4 and less than 5 years, 2 promoted to 1 hired:

If required to fire 5 and less than 6 years, 3 promoted to 1 hired;

If required to fire 6 and less than 7 years, 4 promoted to 1 hired:

If required to fire 7 and less than 8 years, 5 promoted to 1 hired;

On seniority districts where firemen are required to fire eight years or more, all engineers will be promoted.

The foregoing will not prevent committees from having discharged engineers re-employed or reinstated on their former seniority districts at any time.

(i) If the engineer to be hired is not available when needed and the senior qualified fireman is promoted, the date of seniority thus established shall fix the standing of the hired engineer, who, if available and qualified within thirty days from

date senior qualified fireman is promoted, will rank immediately ahead of the promoted fireman. The promoted fireman will retain his date of seniority as engineer and will be counted in proportion of promotion.

- (j) In case an engineer is hired and used in actual service when, under requirements of Section 5 (h), this Article, a fireman (or firemen) should have been promoted, the date of seniority thus established shall fix the standing of the senior qualified fireman (or firemen), due to be promoted, provided he (or they) are eligible and qualify within thirty days, (except as provided for in Section 5 (e)) who shall rank immediately ahead of the hired engineer on the engineers' seniority list. The hired engineer shall retain his date of seniority and be counted in proportion of engineers to be hired.
- (k) The seniority date of the hired engineer shall be the date of his first service as engineer, except as provided in Section 5 (c), 5 (i) and 5 (j) of this Article. It is further provided that engineers hired or permanently transferred from one seniority district to another shall be given a date of seniority as fireman corresponding with their date as engineer. Learning the road or deadheading under orders shall be considered as service.

Reduction of Force.

Sec. 6. (a) When, from any cause, it becomes necessary to reduce the number of engineers on

the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled or chain-gang freight or other service paying freight rates, are averaging the equivalent of 3200 miles per month.

Second: That when reductions are made they shall be in reverse order of seniority.

Engineers Cut Off List.

(b) When hired engineers are laid off account of reduction in service, they will retain all seniority rights; provided they return to actual service within thirty days from the date their services are required.

Addition to Working List.

(c) Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3800 miles per month.

Regulation of Service.

- (d) In the regulation of passenger or other assigned service, sufficient engineers will be assigned to keep the mileage or equivalent thereof within the limitations of 4000 and 4800 miles for passenger service, and 3200 and 3800 miles for other regular service, as provided herein. If in any service, additional assignments would reduce earnings below these limits, regulation will be effected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached.
- (e) On road extra lists, sufficient engineers will be maintained to keep the average mileage, or equivalent thereof, between 2600 and 3800 miles per month; provided that when engineers are cut off the working list and it is shown that those on the extra lists are averaging the equivalent of 3100 miles per month, engineers will be returned to the extra lists if the addition will not reduce the average mileage, or the equivalent thereof, below 2600 miles per month.
- (f) In assigned yard service, regulation will be made by requiring each regularly assigned man to lay off when he has earned the equivalent of 35 days per month.
- (g) Where separate extra lists are maintained for yard service, sufficient engineers will be maintained to keep the average earnings between 26 and

35 days per month; provided that when engineers are cut off the yard working list and it is shown that men are averaging the equivalent of 31 days per month, engineers will be returned to service if the addition will not reduce the average earnings below 26 days per month.

(h) When regulating working lists in the respective classes of service, each list will be handled separately. In the regulation of mileage in road service and days in yard service, neither the minimum nor maximum is guaranteed.

When engineers work in both passenger and freight service, passenger miles will be counted as their equivalent in freight miles in carrying out the mileage regulations.

- (i) If any engineer in assigned service exceeds his maximum miles or days in any 30 day working period the excess will be charged to his mileage or days in his following working period. This shall not apply to engineers who are required to exceed their maximum mileage due to a shortage of engineers.
- (j) Under the provisions of the above rules it is understood that after all engineers who have been taken off have been returned to service as engineers, the 3100 mileage replacement for road extra men and the 31 day replacement for yard extra men shall not apply with respect to further additions.

Registering Miles.

- (k) Upon arrival of each trip, engineers shall register their total mileage, or equivalent thereof, for current calendar month, on the roundhouse register, showing separately freight and passenger mileage, giving total mileage each class of service to date.
- (1) In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers.
- (m) The provisions of Section 7 to and including Section 22, this Article, shall be applicable to yard service in the same manner as to road service.

Note: Local Chairmen will have access to time books for the purpose of checking mileage made by engineers under this Section, excepting when time-keepers are using books to get out payrolls or distributions.

Timekeepers will give the Local Chairmen whatever assistance they can during working hours which does not interfere with performing regular duties.

When Superintendent is furnished mileage statement by Local Chairman indicating that engineers are registering their mileage incorrectly or failing to register their mileage as provided by Section 6 (k), this Article, steps will be taken and engineers disciplined, if necessary, to comply with this section.

Question: What action should be taken when Superintendent or Roundhouse Foreman is notified by Local Chairman in writing that engineers are neglecting or refusing to register their mileage and when officially notified by Local Chairman that engineers had made necessary mileage specified in agreement?

Answer: When notified as above that engineers are failing to register their mileage, they will not be called for service until they have complied with the rules, except in cases of emergency when no other engineers are available, and when officially notified that engineers have made specified mileage, they will not be called for further service during that month, unless some emergency makes their use necessary.

Seniority Lists and Date.

Sec. 7. (a) The Company, on request, will furnish semi-annually to each Division, Brotherhood of Locomotive Engineers, on the district, a complete seniority list of engineers of the district; and will place a copy of the same on bulletin boards at each terminal for sixty days, subject to correction and official acknowledgment by both the officers of the Company and regular Committee of the Brotherhood of Locomotive Engineers. After being thus officially acknowledged, no seniority date of engineers will be changed, except as provided for in

(Plaintiff's Exhibit No. 1 continued)
the provisions of Sections 3 (b), 6 (b), 8 and 9,
this Article.

(b) Any engineer desiring to enter protest against his date on engineers' seniority list, as posted by the Company, shall make out written protest within sixty days, as specified herein, and submit copy to the Master Mechanic or Local Committee of the Brotherhood of Locomotive Engineers.

Exchanging Rights.

- Sec. 8. (a) When engineers on two districts desire to exchange district rights, they will be allowed to do so, provided they receive the approval of the proper officials, taking the junior engineer's rights in both cases.
- (b) The provisions of Section 8 (a), this Article, will apply to all portions of the present Pacific Lines, including former El Paso and Southwestern.

Under the above, engineers may transfer, in accordance with the provisions of these sections from Rio Grande Division to the New Mexico Division, or vice versa, or from the Rio Grande or New Mexico Division to any other division on the Pacific Lines.

Temporary Transfer.

Sec. 9. When engineers are temporarily transferred from one seniority district to another, volunteers will be accepted according to seniority; failing to get sufficient volunteers the youngest

(Plaintiff's Exhibit No. 1 continued) available engineers on the working list of the district from which the transfer is made shall be transferred; if a sufficient number of men cannot be spared from the working list, the list will be supplemented from the senior engineers who have been cut off the working list, and the junior engineers then on the working list so augmented, will be transferred, and will have the privilege of returning at their own request, before the force on the original district is otherwise increased, and shall lose no seniority rights on the first named district. When a temporary transfer is afterwards made permanent, the engineer shall date in senjority on the district to which transferred, on the date of first service on said district.

Bulletining and Assigning Runs.

Sec. 10. (a) All new or vacant runs will be bulletined for seven days for seniority choice of engineers as soon as created or become vacant except on bona fide new runs where it can be anticipated sufficiently in advance such runs will be bulletined for seniority choice of engineers for seven days prior to first date service is to be performed in order that the senior man bidding for same may be placed on the run. Extra engineers working on a run during the life of a bulletin, will be paid in the same manner as if filling vacancy of a regular assigned man. If run is continued for less than six days, bulletin will be considered as

(Plaintiff's Exhibit No. 1 continued)
void and engineer will be compensated as if bulletin had not been issued.

If the senior engineer, or engineers, of the district make application for said run, or runs, prior to the seven days' limit, he or they shall be at once assigned and bulletin withdrawn.

In case a run remains bulletined for seven days and no application is made therefor, the junior engineer of the district shall be assigned.

Bulletin notice shall be sent to each terminal as promptly as possible and the date of the bulletin shall be the date on which the bulletin is posted.

· Bulletin notices of assignment of senior applicants to runs secured by seniority choice will be sent to each terminal promptly, and the posting of such bulletin will constitute notice of assignment and will release men shown on such bulletin of assignment from previous run or service if at home terminal of the run; if not at home terminal on date bulletin is posted, will be released from the run or service upon first arrival at home terminal after such date except where the home terminal of the previous assignment is an outside point, in which case the Company will have 72 hours from 12:01 A. M. following the date bulletin of assignment is issued to furnish relief at outside point. Should the Company fail to relieve a man holding a run with home terminal at outside point at the expiration of the 72-hour period, he will be paid beginning at the expiration of the 72-hour period.

if his new assignment is to be a regular run, not less than he would have earned (exclusive of overtime) had he been placed on such regular run; if, new assignment is to pool freight service, will be paid freight rates per class of locomotive and district not less than 12½ miles per hour (terminals of service on which held to apply) for the service performed until placed in pool freight service.

When bulletins are posted on any seniority district for seniority choice of engineers for vacancies or new runs, no application will be considered unless applicant is actually employed on the working list as an engineer and holding seniority on that district. When such bulletins are posted and no applications are received, the junior engineer on the working list of engineers, if qualified; shall be assigned; provided, if the assignment of said junior engineers will necessitate an addition to engineers' road extra list, the senior engineer cut off the working list will be placed on the road extra list before the assignment is made, and he shall be considered the junior engineer on the engineers' working list and if qualified, will be assigned to advertised position. Local Chairman of the Brotherhood of Locomotive Engineers will be furnished copy of all bulletins advertising new runs.

Question: A passenger run bulletined for seniority choice and no applications received therefor. Should the junior engineer on the district be as(Plaintiff's Exhibit No. 1 continued) signed or the junior engineer who is qualified for passenger service?

Answer: Junior engineer qualified for passenger service, as specified in Article 30, Section 3 (a), should be assigned.

Question: In case where an engineer bids in or makes displacement on a run operating on districts over which he has not worked for a considerable period of time, during which changes may have taken place in track conditions, etc., shall he be required to familiarize himself with the road conditions on his own time prior to being permitted to handle train?

Answer: Yes.

When either terminal of a run is changed, a freight or mixed run is changed to a passenger run, a passenger run is changed to a mixed or freight run, an assigned run is put into pool, either freight or passenger, an assigned freight run is changed to local, or assigned local freight is changed to through freight assignment, a motor is substituted for steam service or steam service is substituted for a motor, when the leaving time of a train is changed two hours or more (excepting trains included in a pool), it shall be considered a new run and bulletined accordingly. When trains are run by "roster", pool or several pools, there being a preference in layovers or trains in said pool or pools, senior men will have their choice and will be placed in roster and pools in order of their

seniority and preference. When an engineer bids or takes a displacement into extra passenger service, he takes his place on board at foot of list.

When on a branch the service consists of one or more freight and passenger trains and one engineer is assigned to the work and the service is changed and one or more engineers are added, making a straight passenger and a straight freight run, such runs shall be considered as new runs and bulletined accordingly.

When a vacancy occurs on any set of runs where the men assigned have a specified layover day, such vacancy shall be bulletined, and when bid in the men already on the runs will have the privilege of taking the preferred layover day, provided such men are older in seniority than the engineer last assigned:

It is understood under the provisions of this section that an engineer losing his run under these conditions may retain run during existence of bulletin.

Refusing Vacant Run.

Sec. 11. An engineer refusing a run vacant or open to his choice, or vacates a run, forfeits thereby no seniority rights, but cannot thereafter claim the run refused, or vacated, except it being again vacant, or in case he is thereafter deprived of a run which he held. Further, an engineer assigned to a run which is rebulletined and is working out

the life of such bulletin and is not the successful applicant for the run, may displace any engineer his junior in accord with the rules.

Engineer Losing Run.

- Sec. 12. (a) An engineer losing his run by reason of its having been discontinued, or having been taken by an engineer his senior, shall be entitled to take any run on the same seniority district held by an engineer his junior in seniority; provided, that where on the run he chooses there are several engineers his junior, and no distinct preference of regular runs or layover days, he shall displace only the junior of such engineers; provided, that the Company will be at no expense for deadheading or time lost on account of such changes.
- (b) If on any run there is a preference of layover days at any point, said engineer shall have preference to displace his junior on run having preferred layover days.
- (c). When an engineer is physically disabled on the account of loss of the sight of one eye, and is required to give up his run, he will have the privilege of displacing any engineer his junior in branch service; if there is no branch run held by an engineer his junior, he will be placed in yard service and will be paid freight rates as per Section 4, Article 11. This to apply until such time as there is a branch run held by an engineer his junior in seniority.

Question: Should an engineer who is entitled to displacement under Section 12, Article 32, be permitted to displace an engineer who has been called for service?

Answer: No.

Sec. 13. Engineers assigned to an established run, mileage composing which is certain, and from any cause the mileage is reduced and it becomes necessary to reduce the force thereon, the senior engineers shall have the right to displace engineers on other runs in accordance with their seniority, as specified in Section 12 of this Article.

Sec. 14. An engineer being displaced from a run, or vacating a run, as specified in Sections 12 and 13, this Article, shall make application for run of his choice when ready for service.

Lap Runs.

Sec. 15. When runs are so changed as to cause engineers to run over more than one district, or part thereof, such runs shall be filled in such service in proportion to the mileage of each district over which the run extends; service to be adjusted without unnecessary delay.

Holding Official Positions.

Sec. 16. An engineer with seniority rights on any district, accepting an official position in the service of the Company, or being exclusively employed by the Brotherhood of Locomotive Engi-

neers on the lines of these companies, retains in either case his seniority rights; upon application, as provided for in Section 12, this Article, he will have the privilege to displace any engineer his junior.

Leave of Absence.

Sec. 17. It is understood that any engineer having been in the service of the Company as an engineer for the space of five years be granted leave of absence for one year and retain his seniority rights; provided, he does not accept a position on any other railroad. After three months, and less than one year, on application, as provided for in Section 12, this Article, he will have the privilege to displace any engineer his junior.

Sec. 18. When an engineer is on leave of absence of less than three months he is presumed to retain his full seniority and will, therefore, be considered as entitled to the privilege of such seniority and may bid for a run by bulletin, as provided for in Section 10, or make application as provided for in Section 12, this Article, to displace any engineer his junior, should his run be taken by an engineer his senior.

Engineers Dismissed or Reinstated.

Sec. 19. An engineer having been dismissed from the service of the Company retains his seniority rights during investigation and appeals of his case; if reinstated, he will be returned to service as provided for in Section 12, this Article.

Sec. 20. (a) Runs vacated by engineers, as specified in Section 8, or by an engineer being off for three months or more from any cause, or as specified in Section 17, or engineers dismissed from the service as specified in Section 19, shall be bulletined as provided for in Section 10, this Article.

(b). Service letters will be granted to engineers on leaving the service of the Company if they make request for same, regardless of the length of time employed.

Investigations.

Sec. 21. (a) No engineer shall be suspended or discharged, except in serious cases, where fault is apparent beyond reasonable doubt, until he has had a fair and impartial hearing before the proper officials. During such hearing he may be assisted by an engineer in service on his seniority district. When decision is rendered, if such engineer believes it injust he may take up his own case on appeal to the higher authorities and, if he so desires, may select an engineer in service on the same. semority district to assist him in presenting his case, but such representation shall be of a purely personal character, and shall not carry with it the sanction of committee representation. No adjustment made by the Company in such cases shall be construed or cited as precedent in any case presented by the Engineers' Committee.

- (b) If an engineer does not handle his own case, as above specified, the regularly constituted committee of the Brotherhood of Locomotive Engineers can appeal through the proper officials to the highest authority; hearing in all cases to be given and decision rendered promptly as possible.
- (c) In all cases where a formal investigation is held, the engineer under investigation will be entitled to representation by the Local Chairman of his organization or by any employee of the same grade in actual service on the engineer's seniority district.

Interrogations will be made by the Superintendent or his representative who is holding the investigation. After he has completed the direct examination, officers of the Company who may be attending the investigation will be allowed to interrogate the witness.

If the engineer's representative desires to ask any questions pertaining to the case of the man represented, he will be allowed that privilege.

Where charges are made regarding engineers, same must be in writing.

No demerits will be charged against an engineer's record without giving him an opportunity for defense and allowing him to present his side of the case.

If the Chairman of the Local Committee requests a transcript of the testimony in an investigation that has been made, it will be furnished.

Note: It is understood the above rules cannot be construed to have been properly observed unless the engineer and/or his representative are confronted with all the charges and evidence and provided with a copy of transcript of all evidence.

(d) If an engineer is suspended or discharged and is proven to have been innocent of the offense charged, he shall be reinstated and paid \$6.87 per day for time lost on such account.

Representation Rule.

Sec. 22. The General Committee of Adjustment, Brotherhood of Locomotive Engineers, will represent all locomotive engineers in the making of contracts, rates, rules, working agreement, and interpretations thereof.

All controversies affecting locomotive engineers will be handled in accordance with the recognized interpretation of the Engineers' contract as agreed upon between the Committee of the Brotherhood of Locomotive Engineers and the Management.

In matters pertaining to discipline, or other questions not affecting changes in Engineers' contract, the officials of the Company reserve the right to meet any of their employes either individually or collectively.

Miscellaneous Service and General Regulations.

ARTICLE 33.

Doubling Grades.

Section 1. When engineers in passenger service are required to double on grades or run for fuel or water, ten miles will be allowed for each double. When actual mileage exceeds ten, actual miles will be allowed, such mileage to be added to other mileage made on trip, where mileage in the aggregate exceeds 100, time consumed doubling will not be counted in computing overtime.

Setting Up Wedges, Filling Grease Cups. Etc.

Sec. 2. (a) Engineers will not be required to set up wedges, fill grease cups, or clean headlights at points where competent roundhouse force is employed. Neither will they be required to place on, or remove tools or supplies from locomotives, fill lubricators, flange oilers, headlights, markers or other lamps at points where roundhouse force or engine watchman is employed.

Drinking Water and Containers.

(b) Locomotives will be supplied with necessary ice for drinking water during periods required, with due regard to proper economy. Drinking water containers on locomotives will be cleaned and inspected at terminals and otherwise kept in a sanitary condition.

Hostlers.

Sec. 3. When the rate of pay for "Outside Hostlers" equals the rate of pay for switch engineers, such positions shall be bulletined for seniority choice of engineers as fast as vacancies occur.

Efficiency Tests.

Sec. 4. We recognize the necessity of making efficiency tests, but when such tests are made they should not be conducted under conditions that are hazardous, to the employes.

Switch light tests will be made only when the switch can be seen for a long distance and at trailing point switches. All tests are to be made under operating conditions. It is not the intention to make tests where trains will be stopped on mountain grades where helper locomotives might be stopped in tunnels.

In making surprise tests, engineers will not be required to change indicators, uncover headlights or turn markers.

. Official Record of Weights On Drivers.

- Sec. 5. (a) For the purpose of officially classifying locomotives, the Company will keep bulletin at all terminals showing actual weight on drivers of all engines in its service, which weight shall also be stenciled on side of cab.
- (b) Where locomotive is equipped with trailer truck booster, the total weight on all trailer wheels will be added. Where locomotive is equipped with

tender booster, total weight on truck so equipped will be added to weight on drivers. Total weights produced by such increased weights shall fix the rates for the respective classes of service.

It is understood that weight on drivers refers to weight on drivers of engine in working condition, which would include sand in sand box, water in boiler, and fire in fire box.

Meals En Route.

Sec. 6. Engineers will be given a reasonable time to eat between terminals if hours on duty make it necessary or conditions of service permit.

When men desire to eat, both the train and ungine crews should eat at the same point, notifying the dispatcher in advance where they intend to do so. Where crews stop for this purpose, they will reduce the time of such delay to the minimum.

Vouchers .

Sec. 7. For all established shortages of \$2.50 or more, vouchers will be issued. Sums of less than \$2.50 will be carried on next pay roll. It is understood in this connection, however, that where the fault of such shortage lies with the engineer; the time will be carried on next pay roll, regardless of the amount.

Transferring Household Effects.

Sec. 8. Engineers, who are on working lists, either regularly assigned or extra, will be granted

two free billings of their household effects per year when changing from one point to another on their respective divisions.

Rules Governing Handling and Compensating Engineers Under the Federal Hours of Service Law.

ARTICLE 34.

Section 1. Under the laws limiting the hours on duty, crews in road service will not be tied up unless it is apparent that the trip cannot be completed within the lawful time; and not then, until the expiration of fourteen hours on duty under the Federal law, or within two hours of the time limit provided by State laws if State laws govern.

Sec. 2. If road crews are tied up in a less number of hours than provided in the preceding paragraph, they shall not be regarded as having been tied up under the law, and their services will be paid for under the individual schedules of the different roads.

Sec. 3. When road crews are tied up between terminals under the law, they shall again be considered on duty and under pay immediately upon the expiration of the minimum legal period off duty applicable to the crew, provided the longest period of rest required by any member of the crew, either eight or ten hours, to be the period of rest for the entire crew.

Sec. 4. A continuous trip will cover movement straightaway or turnaround, from initial point to the destination train is making when ordered to tie up. If any change is made in the destination after the crew is released for rest, a new trip will commence when the crew resumes duty.

Sec. 5. (As amended by the Eight Hour Settlement effective January 1st, 1917.) Engineers in train service tied up under the law will be paid continuous time from initial point to tie-up point. When they resume duty on continuous trip, they will be paid from tie-up point to terminal on the following basis: For fifty (50) miles or less, or four (4) hours or less, one-half day; for more than fifty (50) miles, or more than four (4) hours, actual miles or hours, whichever is the greater, with a minimum of one day. It is understood that this does not permit running engine crews through terminals or around other engine crews at terminals unless such practice is permitted under the pay schedules.

Question: Does minimum allowance of 50 miles for movement from tie-up point to terminal as specified in Section 5, Article 34, apply to cases where engineers tie up under Hours of Service Law at a point within the yard limits of terminal yard?

Answer: Engineers tying up under law within terminal yard limits and before reaching station mile board, shall be paid under provisions of these

sections and articles, but these provisions will not apply to crews tied up after passing station mile boards. At stations where mile boards not provided, location or designated point agreed upon will govern.

- Sec. 6. Road crews tied up for rest under the law, and then towed or deadheaded into terminal, with or without engine or caboose, will be paid therefor as per Section 5, the same as if they had run the train to such terminal.
- Sec. 7. If any service is required of an engine erew, or if held responsible for the engine, during the tie-up under the law, they will be paid for all such service.
- Sec. 8. The foregoing sections constitute an agreement for the Railway Companies named in the original memorandum and their Conductors, Trainmen, Engineers and Firemen, as to runs that are tied up in conformity with the law, and becomes a part of the schedules or agreements of these roads, and subject to their provisions as to amendment by mutual consent. Nothing herein contained shall be construed to amend or annul any rule in the various agreements with individual roads.

Interpretation.

ARTICLE 35:

In case of disagreement as to interpretation on Articles in this schedule, the Local Committee.

Brotherhood of Locomotive Engineers, will take up same with division officers and all evidence will be submitted to General Manager, or his authorized representative, for decision, copy of decision to be furnished General Chairman of Engineers' Committee.

Change of Agreement.

ARTICLE 36.

This supersedes previous agreements. This Agreement and accepted rulings now in effect between officials of the Company and representatives of the Brotherhood of Locomotive Engineers shall continue in effect, subject to any subsequent Municipal, State or Federal legislation, and until either party desiring to change any of the foregoing rules or regulations shall have given to the other party thirty days' notice in writing of the change or changes desired.

Signed this 9th day of January, 1931.

For the Company:

R. McINTYRE,

Assistant to General Manager.

For the Brotherhood of Locomotive Engineers:

P. O. PETERSON,

Chairman, G. C. of A., B. of L. E.

L. A. BENNETT,

Secretary-Treasurer, G. C. of A., B. of L. E.

(Plaintiff's Exhibit No. 1 continued) Memorandum of Agreement.

Following understanding reached in conference January 17, 1928:

(1) It is agreed that two hostler firemen, assigned 12:40 P. M.-8:40 P. M. and 4:40 P. M.-12:40 A. M. shifts Oakland Pier, and one hostler fireman, assigned 6:20 A. M.-2:20 P. M. shift Alameda Pier, East Bay Electric Division, will vacate their assignments, which will be filed by the three senior engineers making application, in accordance with Section 3, Article 33, Engineers' Agreement, and will perform same duties now performed by hostlers.

The three engineers herein referred to will be paid yard engineers' rates, but Article 29, and interpretations thereon, Firemen's Agreement, will govern their working conditions.

(2) Engineers before being assigned to this service will qualify as outlined in Section 3, Article 17, Engineers', and Article 29, Article 30, Section 4, Firemen's Agreements, and will not be displaced for a period of six months; neither will such engineers be privileged to exercise their seniority in bidding into vacancies or new positions for a period of six months (unless cut off working list) and will remain on assignments during life of bulletin and until their relief qualifies. Should these men be used in emergency to handle train, they will be paid minimum passenger guarantee.

- (3) Vacancies in hostling service Oakland and Alameda Piers will be filled from the engineers' passenger extra list, who will be required to familiarize themselves with the movements and duties of hostlers, in order that they may perform their duties satisfactorily, and will receive for such service minimum passenger guarantee.
- (4) Following illustrates formula to be followed should force be reduced:

Present assignment	***************************************	.4	hostlers	3	engineers
Reduction of force					
		3	hostlers	. 3	engineers
Reduction of force	**************************************	1.		1	engineer
	× .			2	engineers
Reduction of force	***************************************	.1	hostler		
	a	2	hostlers	2	engineers
Reduction of force				. 1	engineer
0		2	hostlers	1	engineer '
Reduction of force	***************************************	1	hostler		
		1	hostler	1	engineer
Reduction of force	***************************************			1	engineer
		1	hostler	0	
Reduction of force		1	hostler	d3	
		0	•	0	

For the Company:

R. McINTYRE,

Assistant to General Manager.

For the Organizations:

P.O. PETERSON,

General Chairman, B. L. E.

J. A. FORD,

General Chairman, B. L. F. & E.

Dated at San Francisco, January 17, 1928.

Question 57, Int. No. 1, Supplement No. 24—Should all service, both passenger and freight, formerly paid on a monthly, daily or trip basis, be established upon the mileage basis and paid the rates provided, regardless of the fact that this may in some cases effect a reduction in present compensation?

Decision: Rates of the order shall apply for the respective classes of service, but former higher rates shall be retained.

Question 64, Int. No. 1, Supplement No. 24—Where daily rates are in excess of standard, how shall overtime rates be determined?

Decision: Service paid on a passenger basis, oneeighth of such daily rate, per hour. Service paid on the freight basis, 3/16ths of such daily rate, per hour.

ARTICLE 10 (e), SUPPLEMENT No. 24.

Special provisions of schedules for irregular conditions, such as crews called and not used, dead-heading, attending court and investigations, and similar miscellaneous rules covering conditions which are not connected with the handling of a train and which provide for payments on the basis of "overtime rates", shall be changed to provide for payments at the former rates, it being the intent that the time and one-half basis shall not apply in such cases. Where, under such rules, time

in excess of the limits of the day is paid for as overtime, the overtime rates of this order apply.

Question 71, Int. No. 1, Supplement No. 24—Are special allowances based on, say, 30 minutes or less, not to count; over 30 minutes one hour, changed to a minute basis by paragraph (b) of Article 7?

Decision: No. The supplement provides the minute basis only in connection with road overtime.

R. McINTYRE.

Assistant to General Manager, Southern Pacific Company (Pacific Lines).

P. O. PETERSON,

General Chairman, B. of L. E.

L. A. BENNETT,

Sec'y-Treas, B. of L. E.

TABLE SHOWING TIME AFTER WHICH OVER-TIME ACCRUES ON RUNS 100 MILES TO 199 MILES IN LENGTH, ON SPEED BASIS OF 121/2. MILES PER HOUR.

Distance, miles	Overtime accrues after hours	Distance, miles	Overtime accrues p after hours
100	8:00	131	10:29
101 .	8:05	132	10:34
102	8:10	133	10:38
103	8:14	134	10:43
104	8:19	135	10:48
105	8:24	136	10:53
106	8:29	137	10:58
107:	8:34	138	11:02
108	8:38	139	11:07
109	8:43	·140	11:12
110	8:48	141	11:17
111	8:53	142	11:22
112	8:58	143	11:26
113	9:02	144	11:31
114	9:07	145	11:36
115	9:12	146	11:41
116	9:17	147	. 11:46
- 117	9:22	148	11:50
- 118	9:26	149	11:55
119	9:31	150	. 12:00
120	9:36	151.	12:05
121	9:41	152	12:10
122	9:46	153	12:14
-123	9:50	154	• 12:19
124	9:55	155	12:24
125		156	12:29
126	10:05	157	12:34
127	10:10	158	12:38
128		159	12:43
129	10:19	160	12:48
130	10:24	161	12:53

Distance, miles	Overtime accrues after hours	Distance, miles	Overtime accruss after hours
162	12:58	181	14:29
163	13:02	182	14:34
. 164	13:07	183	14:38
165	13:12	184	14:43
166	13:17	185	14:48
167	13:22	186	11.50
168	13:26	187	14:58
169	13:31	188	48.00
170	13:36	189	
171	13:41	190	
172	13:46	191	
173	13:50	192	15:22
174	10 22	193	15:26
175	14:00		
176	14:05	195	15:36
177	14:10	196	
178	14:14	197	15.46
179	14:19	198	15:50
180	14:24		15:55
1		100	

TABLE SHOWING TIME AND ONE-HALF FOR OVER-TIME (18% MILES PER HOUR) EXPRESSED IN MILES. FROM 3 MINUTES TO 8 HOURS, IN-CLUSIVE.

Overtime	Miles	Overtime	Miles	. Overtime	Miles
3	1	1:49	. 34	3:34	67
6	2	1:52	35	3:38	68
. 10	3	1:55	36	3:41	69
13:	4 .	1:58	37	3:44	70
16	5	2:02	38	3:47	71
19	6	2:05	39	3:50	72
: 22	7,	2:08	40	3:54	73 ,
26	8	2:11	41	3:57	74
. 29	9:	2:14	42	4:00	
32	10	2:18	43	4:03	
. 35	11	2:21	44	4:06	77
38	12	2:24	45	4:10	78
42	13	. 2:27	46	4:13	79.
45	14	2:30	47	4:16	. 80
48	15	2:34	. 48	4:19	81
. 51	16	2:37	49	4:22	. 82
54	17	2:40	50	4:26	.83
58	18	-2:43	51.	4:29	84
1:01	19	.2:46	52	4:32	. 85
1:04	20 .	2:50	53	4:35	. 86
1:07	21	2:53	54	4:38	87
1:10	22 ·	2:56	55 .	4:42	88
1:14	23	• 2:59	56	4:45	89
1:17	24′	3:02	57	4:48	90
1:20	25	3:06	58	4:51	91
1:23	26	3:09	*59	4:54	92 ·
1:26	27.	3:12	60	4:58	93
1:30	28	8:15	61	5:01	94
1:33	29	3:18	62	5:04	95.
1:36	30	3:22	63	5:07	96
1:39	31	3:25	64	5:10	97
1:42	32	3:28	65	5:14	98
1:46	33	3:31	.66	5:17	99

Overtime	Miles	Overtime	Miles	Overtime	Miles
5:20	100	6:14	117	7:09	134
5:23	101	6:18	118	7:12	135
5:26	102	6:21	119	7:15	186
5:30	103	6:24	120	7:18	. 137
5:33	104	6:27	121	7:22	138
5:36	105	6:30	122	7:25	139
5:39	106	6:34	123	7:28	140
5:42	107	. 6:37	124	7:31	141
5 :46	108	6:40	125	7:34	142
5:49	109	6:43	126	7:38	143
5:52	110	6:46	127	7:41	144
্ \$:55	111	6:50	128	7:44	145
3:58	112	6:53	129	7:47	146
6:02	113	6:56	130	7:50	147
6:05	114	6:59	131	7:54	148
6:08	115	7:02	132	7:57	149
6:11	116	7:06	. 133	8:00	1500
	-11		1	1	

[Endorsed]: Pltf. Exhibit No. One. Filed 10/10/40. Walter B. Maling, Clerk, By Harry F. Fouts, Deputy Clerk.

PLAINTIFF'S EXHIBIT No. 2

Southern Pacific Company (Pacific Lines)

Southern Pacific Lines

FIREMEN'S AGREEMENT

Effective:

Rates of Pay, October 1, 1937 Rules, June 1, 1939

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AGREEMENT

It is hereby understood and agreed between the Management of the Southern Pacific Company (Pacific Lines), excluding former El Paso and Southwestern, and the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen that the following rules and regulations governing the rates of pay and working conditions of Firemen, Helpers, Hostlers and Hostler Helpers will be in effect as follows:

Rates of pay, effective October 1, 1937. Rúles, effective June 1, 1939.

ARTICLE 1.

Beginning and Ending of a Day.

In all classes of service firemen and helpers' time will commence at the time they are required to report for duty, and shall continue until the time the engine is placed on the designated track or they are relieved at terminal. Firemen are relieved when registering in.

Question 76, Interpretation No. 1, Supplement No. 24:

Does this section contemplate the payment of continuous time between terminals whether crews are tied up under the law or otherwise?

Decision: Yes, deducting time tied up under the law, schedule rules or accepted practices.

ARTICLE 2.

What Constitutes a Trip.

Sec. 1. In passenger or freight service a fireman has reached the end of a trip when he reaches the division or district terminal at which engine crews are usually changed, or arrives at the established terminal of his train, as shown by his assignment, and having done so his trip will be completed and he will take his place on the board in accordance with the rules governing the running of firemen in such service. Should he proceed farther with the same train or be sent out on another train, he will, in either case, begin another trip.

When steam locomotive is substituted for motor car, in service constituting a regular assignment for an engineer, a fireman temporarily used in such service will be subject to the following working conditions and basis of pay:

- (a) Fireman will take conditions of assignment as identified for the engineer and will be allowed a minimum of 150 miles, including overtime at road rates (applicable to last engine used), for each day engaged in or held for such service. Where trip in such service is made from a division or district terminal to a division or district terminal, this rule does not apply.
- (b) Fireman en route to point where such service begins, or is returning to his assigned territory after being relieved from such service, will be paid under this rule, unless the run is under bulletin for six days or more.
- (c) Extra fireman (or pooled freight fireman as provided in Section 7 of Article 37) working on a run during the life of a bulletin, will be paid in the same manner as if filling vacancy of a regular assigned man. If run is continued for less than six days, bulletin will be considered as void and fireman will be compensated as if bulletin had not been issued and in accordance with paragraph (a).
 - (d) When miles run or hours worked, including initial and terminal switching, initial and terminal delay and overtime, exceeds 150 miles on any trip or day's work, fireman will be allowed actual compensation earned.

- Sec. 2. On a turnaround trip (where fireman is turned back at an intermediate point), the starting point will be the terminal as well, except as provided for in Section 3, this Article.
- Sec. 3. Firemen or helpers in pool or irregular freight service may be called to make short trips and turnarounds, with the understanding that one or more turnaround trips may be started out of the same terminal and paid actual miles, with a minimum of 100 miles for a day, provided:
 - (1) That the mileage of all the trips does not exceed 100 miles.
 - (2) That the distance run from the terminal to the turning point does not exceed twenty-five miles.
- (3) That firemen or helpers shall not be required to begin work on a succeeding trip out of the initial terminal after having been on duty eight consecutive hours, except as a new day subject to the first-in first-out rule.
- (4) Initial call will specify short turnaround service:
- (5) This section does not apply to firemen or helpers in pusher and helper service, mine runs, work trains, or wreck trains,

Note: A fireman or helper after completing each trip in short turnaround service shall be placed at the foot of the list and permitted to work his way toward first-out position, but may, if needed for another short turnaround trip within eight hours

from time ordered to report for duty on first trip, be run around other firemen without runaround penalty.

If fireman placed at foot of list reaches first-out position prior to expiration of eight hours from time first ordered to report for short turnaround service and can be used on another short turnaround trip before the expiration of the first eight hours, it will be optional with the Company to call him for other service or hold him for short turnaround service.

Question 79, Interpretation No. 1, Supplement No. 24:

Must the crew actually leave the terminal before the expiration of eight hours?

Decision: No; but crews should not ordinarily be required to begin work on a second or succeeding trip when it is apparent that the departure from the terminal will be delayed beyond eight hours from going on duty on initial trip.

Question 80, Interpretation No./1, Supplement No. 24:

In operating turnaround service under this section, may crews be turned at a terminal out of which other crews operate?

Decision: Yes.

Question 81, Interpretation No. 1, Supplement No. 24:

Where crews are called for turnaround service, in what territory may they be used?

Decision: They may be used in either or both directions out of the initial terminal in territory where it is permissible to use them for other than short turnaround trips.

ARTICLE 3.

Assignments.

Through Passenger Service.

Sec. 1. Firemen in through passenger service will be assigned.

Between Portland and Roseburg Roseburg and Ashland \ via Siskiyou Line Ashland and Dunsmuir Portland and Eugene Eugene and Klamath Falls Klamath Falls and Dunsmuir Cascade Line Dunsmuir and Gerber Gerber and Sacramento-Oakland Ogden and Carlin Carlin and Sparks Sparks and Roseville Roseville and Oakland Oakland and Fresno Fresno and Bakersfield Bakersfield and Los Angeles San Francisco and San Luis Obispo San Luis Obispo and Santa Barbara Santa Barbara and Los Angeles

Los Angeles and Yuma Yuma and Tucson via Gila Yuma and Tucson via Phoenix Tucson and Lordsburg Lordsburg and El Paso

Main Line Pooled Freight Service.

Sec. 2. Firemen in main line pooled freight service will be assigned.

Between Brooklyn and Eugene
Eugene and Roseburg
Roseburg and Ashland
Ashland and Dunsmuir
Eugene and Crescent Lake
Crescent Lake and Klamath Falls
Klamath Falls and Alturas
Alturas and Wendel
Klamath Falls and Dunsmuir
Dunsmuir and Gerber
Gerber and Roseville
Ogden and Carlin (with layover at Montello)

Carlin and Imlay
Imlay and Sparks
Sparks and Roseville
Roseville and Tracy-Fresno
Fresno and Bakersfield
Bakersfield and Los Angeles

(Plaintiff's Exhibit No. 2 continued)
Oakland and Roseville-Tracy-San JoseSan Francisco

San Francisco and Watsonville Junction Watsonville Junction and San Luis Obispo

San Luis Obispo and Santa Barbara
Santa Barbara and Los Angeles
Los Angeles and Indio
Indio and Yuma
Yuma and Gila
Yuma and Phoenix
Phoenix and Tucson
Gila and Tucson
Tucson and Lordsburg
Lordsburg and El Paso

Note: Firemen will be run first-in first-out in direction bound at Montello.

ARTICLE 4.

Passenger Service.

- Sec. 1. The minimum passenger rate for fivemen and helpers shall be \$5.30, 100 miles or less, five hours or less, shall constitute a minimum day's work in all classes of passenger service, except as otherwise specified; miles made in excess of 100 prorata.
- Sec. 2. On short turnaround runs, no single trip of which exceeds 80 miles, including suburban serv-

ice, overtime shall be paid for all time actually on duty or held for duty in excess of eight hours (computed on each run from the time required to report for duty to end of that run) within 10 consecutive hours; and also for all time in excess of 10 consecutive hours computed continuously from the time first required to report to final release at end of last run. Time shall be counted as continuous service in all cases where the interval of release from duty at any point does not exceed one hour. Overtime will be paid at one-eighth of the daily rate, with a minimum of 64 cents per hour, and will be computed on the minute basis.

Question 16, Interpretation No. 1, Supplement No. 24:

Is it permissible to definitely assign crews coming under this section on the basis of a minimum day in each direction?

Decision: Yes.

Question 17, Interpretation No. 1, Supplement No. 24:

Where the 8-within-10 hour passenger overtime rule is adopted, may the time consumed in performing extra service, paid for separately, be deducted in computing overtime?

Decision: Where 8-within-10-hour rule applies and incidental service is permissible under the schedules or the practices of individual roads, time consumed in such incidental or additional service (Plaintiff's Exhibit No. 2 continued) and paid for separately should not be included in calculating time under the 8-within-10-hour rule.

Question 18, Interpretation No. 1, Supplement No. 24:

Must engine and train crews have same initial terminal?

Decision: No; primarily because train and engine crews have different mileage basis for a day, which has resulted in crews not following same assignment.

Question 19, Interpretation No. 1, Supplement No. 24:

Does this rule apply to extra and unassigned service?

Decision: Yes; in which case call shall specify whether crew is to be paid on turnaround or straightaway basis.

Sec. 3. In all passenger service, the earnings from mileage, overtime or other rules applicable, for each day service is performed shall be not less than \$5.99 for firemen or helpers.

In applying the \$5.99 minimum for firemen in passenger service, it is intended that on assignments where the men run so as to make only the equivalent of a single trip in one direction each day, they shall be paid the guaranteed minimum for each single trip.

For example: On a 100-mile division men double the road Monday, lay over Tuesday, double Wednesday, and lay over Thursday, etc. They should be (Plaintiff's Exhibit No. 2 continued) allowed the minimum for each leg of their turn-around trip.

On the same division other crews double the road Monday and Tuesday, and lay over Wednesday, double Thursday and Friday, and lay over Saturday. These men make the equivalent of four single trips every three days, and therefore would not be entitled to the minimum for each trip.

Question 6, Interpretation No. 1, Supplement No. 24:

May amounts earned under overtime rule, terminal delay, backouts, etc., be applied against these guarantees?

Decision: Yes.

Question 7, Interpretation No. 1, Supplement No. 24:

Are former guarantees higher than provided by this section maintained?

Decision: Yes.

Question 8, Interpretation No. 1, Supplement No. 24:

May runs of under 80 miles in each direction be placed on a one-way basis and a minimum day allowed in each direction?

Decision: Yes, if definitely assigned, in which case overtime rules applicable to through passenger service in effect shall apply.

Question 11, Interpretation No. 1, Supplement No. 24:

Do the minimum earnings fixed by Section 3, Article 4, also apply in short turnaround electric

(Plaintiff's Exhibit No. 2 continued)
passenger service whether operated by electric locomotive or multiple unit?

Decision: Yes.

Sec. 4. On valley districts the minimum passenger rate shall be:

Waight on Drivers	Coal	on	Helpers
Less than 80,000 lbs	\$5.30	\$5.30	\$5.30
80,000 to 100,000 lbs		5.30	. 5.30
100,000 to 140,000 lbs	5.46	5.30	5,30
140,000 to 170,000 lbs	5.62	5.46	5.30
170,000 to 200,000 lbs		5.54	.5.30
200,000 to 250,000 lbs	5.78	5.62	5.46
250,000 to 300,000 lbs			5,46
300,000 to 350,000 lbs			5.46
350,000 to 400,000 lbs	5.94	5.78	5.46
400,000 to 450,000 lbs			5,62
450,000 to 500,000 lbs			5.62
500,000 lbs. and over	6.18	6.02	5.62
Mallet Type:			
Regardless of weight on	drivers \$6.50	\$6.45	
Articulated Consolid			
400,000 to 450,000 lbs		6.45	
450,000 to 500,000 lbs		6.45	
500,000 to 550,000 lbs.a			

Sec. 5. On lines east of Sparks the minimum passenger rate shall be:

	The state of the s			
Weight on Drivers Less than 80,000		Coal \$5.47	\$5.47	Helpers \$5,47
80,000 to 100,000	lbs	5,55	5.47	. 5.47
100,000 to 140,000	lbs: · ·	5.63	5.47	5.47.
140,000 to 170,000	1bs,	5.72	5.63	. 5.47
170,000 to 200,000	lbs.	5.70	5.64	5.40
200,000 to 250,000	lbs.	5.78	5.62	5.46
250,000 to 300,000	lbs	5.78	5.62	5.46

300,000 to 350,000 lbs	5.70	5.46
350,000 to 400,000 lbs 5.94	5.78	5.46
400,000 to 450,000 lbs. 6.02	5.86 .	5.62
450,000 to 500,000 lbs	5.94	. 5.62
500,000 lbs. and over 6.18	6.02	5.62
Mallet Type: Regardless of weight on drivers 6.50	6.45	
Articulated Consolidation:		
400,000 to 450,000 lbs	6.45	
'450,000 to 500,000 lbs'	6.45	
500,000 to 550,000 lbs	6.45	

Sec. 6. Between Phoenix and Hassayampa, Phoenix and Maricopa, Phoenix and Christmas, Phoenix and Casaba, the minimum passenger rate shall be:

80,000 to 100,000 lbs. 5,38 5,38 100,000 to 140,000 lbs. 5,46 5,46 140,000 to 170,000 lbs. 5,624 5,46 170,000 to 200,000 lbs. 5,70 5,46 200,000 to 250,000 lbs. 5,78 5,62 250,000 to 300,000 lbs. 5,78 5,62 300,000 to 350,000 lbs. 5,78 5,54 350,000 to 400,000 lbs. 5,78 5,46 400,000 to 450,000 lbs. 5,86 5,62 450,000 to 500,000 lbs. 5,94 5,62	Weight on Drivers	Firemen	Helpers
100,000 to 140,000 lbs. 5.46 5.46 140,000 to 170,000 lbs. 5.624 5.46 170,000 to 200,000 lbs. 5.70 5.46 200,000 to 250,000 lbs. 5.78 5.62 250,000 to 300,000 lbs. 5.78 5.62 300,000 to 350,000 lbs. 5.78 5.54 450,000 to 400,000 lbs. 5.78 5.62 450,000 to 500,000 lbs. 5.86 5.62 450,000 to 500,000 lbs. 5.94 5.62 Mallet Type: Regardless of weight on drivers. \$6.45 Articulated Consolidation: 400,000 to 450,000 lbs. 6.45 450,000 to 500,000 lbs. 6.45	Less than 80,000 lbs	\$5,30	\$5,30
140,000 to 170,000 lbs. 5.62 5.46 170,000 to 200,000 lbs. 5.70 5.46 200,000 to 250,000 lbs. 5.78 5.62 250,000 to 300,000 lbs. 5.78 5.54 350,000 to 350,000 lbs. 5.78 5.54 400,000 to 400,000 lbs. 5.78 5.62 450,000 to 500,000 lbs. 5.86 5.62 450,000 to 500,000 lbs. 5.94 5.62 500,000 lbs. and over 6.02 5.62 Mallet Type: Regardless of weight on drivers. \$6.45 Articulated Consolidation: 400,000 to 450,000 lbs. 6.45	80,000 to 100,000 lbs	5,38	5.38
170,000 to 200,000 lbs. 5.70 5.46 200,000 to 250,000 lbs. 5.78 5.62 250,000 to 300,000 lbs. 5.78 5.62 300,000 to 350,000 lbs. 5.78 5.54 350,000 to 400,000 lbs. 5.78 5.46 400,000 to 450,000 lbs. 5.86 5.62 450,000 to 500,000 lbs. 5.94 5.62 500,000 lbs. and over 6.02 5.62 Mallet Type: Regardless of weight on drivers. \$6.45 Articulated Consolidation: 400,000 to 450,000 lbs. 6.45	100,000 to 140,000 lbs	5.46	5.46
200,000 to 250,000 lbs			5,46,
200,000 to 250,000 lbs	170,000 to 200,000 lbs	5.70	5.46
300,000 to 350,000 lbs. 5.78 5.54 350,000 to 400,000 lbs. 5.78 5.46 400,000 to 450,000 lbs. 5.86 5.62 450,000 to 500,000 lbs. 5.94 5.62 500,000 lbs. and over 6.02 5.62 Mallet Type: Regardless of weight on drivers. \$6.45 Articulated Consolidation: 400,000 to 450,000 lbs. 6.45 450,000 to 500,000 lbs. 6.45	200,000 to 250,000 lbs	5,78	5.62
350,000 to 400,000 lbs. 5.78 5.46 400,000 to 450,000 lbs. 5.86 5.62 450,000 to 500,000 lbs. 5.94 5.62 500,000 lbs. and over 6.02 5.62 Mallet Type: Regardless of weight on drivers. \$6.45 Articulated Consolidation: 400,000 to 450,000 lbs. 6.45 450,000 to 500,000 lbs. 6.45			5.62
350,000 to 400,000 lbs. 5.78 5.46 400,000 to 450,000 lbs. 5.86 5.62 450,000 to 500,000 lbs. 5.94 5.62 500,000 lbs. and over 6.02 5.62 Mallet Type: Regardless of weight on drivers. \$6.45 Articulated Consolidation: 400,000 to 450,000 lbs. 6.45 450,000 to 500,000 lbs. 6.45	300,000 to 350,000 lbs	5,78	5.54
450,000 to 500,000 lbs. 5.94 5.62 500,000 lbs. and over 6.02 5.62 Mallet Type: Regardless of weight on drivers \$6.45 Articulated Consolidation: 400,000 to 450,000 lbs. 6.45 450,000 to 500,000 lbs. 6.45	350,000 to 400,000 lbs.	5.78	5,46
450,000 to 500,000 lbs. 5.94 5.62 500,000 lbs. and over 6.02 5.62 Mallet Type: Regardless of weight on drivers \$6.45 Articulated Consolidation: 400,000 to 450,000 lbs. 6.45 450,000 to 500,000 lbs. 6.45	400,000 to 450,000 lbs	5,86	5.62
500,000 lbs. and over 6.02 5.62 Mallet Type: Regardless of weight on drivers \$6.45 Articulated Consolidation: 400,000 to 450,000 lbs. 6.45 450,000 to 500,000 lbs. 6.45	450,000 to 500,000 lbs.	5,94	5.62
Regardless of weight on drivers. \$6.45 Articulated Consolidation: 6.45 400,000 to 450,000 lbs. 6.45 450,000 to 500,000 lbs. 6.45	.500,000 lbs. and over	6.02	5.62
Articulated Consolidation: . 400,000 to 450,000 lbs. 6.45 . 450,000 to 500,000 lbs. 6.45	Mallet Type:		* * *
400,000 to 450,000 lbs. 6.45 450,000 to 500,000 lbs. 6.45	Regardless of weight on drivers	\$6.45	
450,000 to 500,000 lbs	Articulated Consolidation:		
	. 400,000 to 450,000 lbs	6.45	
500,000 to 550,000 lbs	450,000 to 500,000 lbs	6.45	
	500,000 to 550,000 lbs	6.45	

Sec. 7. Between Bowie and Miami the minimum passenger rate shall be:

Weight on Drivers	Firemen	Helpers
Less than 80,000 lbs.	\$5.30	. \$5.30
80,000 to 100,000 lbs.	5.30	5.30
100,000 to 140,000 lbs	5.46.	5.46
140,000 to 170,000 lbs.	5.62 •	5.46.
140,000 to 170,000 lbs. 170,000 to 200,000 lbs.	5.70	5,46
200,000 to 250,000 lbs		.5.54
250,000 to 300,000 lbs.	5.70	5,54
300,000 to 350,000 lbs.	5.70	5.46
350,000 to 400,000 lbs.	5.78	5:46
400,000 to 450,000 lbs.		5.62
450,000 to 500,000 lbs	5.94 .	5.62
500,000 lbs. and over.	6.02	5.62
Mallet Type:		
Regardless of weight on drivers	6.45	- '-
Articulated Consolidation:		
400,000 to 450,000 lbs.	6.45	
450,000 to 500,000 lbs.	6.45	
500,000 to 550,000 lbs	6.45	
••		

Sec. 8. Between Bakersfield and Los Angeles, Mojave and Owenyo, Sacramento and Sparks, Gerber and Ashland. Dunsmuir and Klamath Falls, Klamath Falls and Wendel, including Lakeview Branch, Ashland and Roseburg, Eugene and Klamath Falls, Los Angeles and Indio, including branches between Los Angeles and Indio, (mountain districts), the minimum passenger rate shall be:

Weight on Drivers	Coal	Oil	Helpers
Less than 80,000 lbs.	\$5.75	\$5.75	\$5.75
80,000 to 100,000 lbs	5.83	5.75	5.75
· 100,000 to 140,000 lbs.	6.08	5.92	5.92
140,000 to 170,000 lbs.	6.41	6.26	6.10
170,000 to 200,000 lbs	6.50	6.33	6.09
200,000 to 250,000 lbs	6:58	6.42	6.26
250,000 to 300,000 lbs	-6.58	6.42	6.26
300,000 to 350,000 lbs	6.66	6.50	6.26
350,000 to 400,000 lbs	6.73	6.58	6.26
400,000 to 450,000 lbs		6.66.	6.42
450,000 to 500,000 lbs	6.89	6.74	6.42
500,000 lbs. and over-	6,97	6.82	6.42
Articulated Consolidation:			
400,000 to 450,000 lbs		6.70	
450,000 to 500,000 lbs		6.95	
500,000 to 550,000 ibs		7.20	
Between Roseville and Truck	ee:		
Weight on Drivers	Coal	Oil	Helpers
140,000 to 170,000 lbs	\$7.23	\$7.07	\$6.91
170,000 to 200,000 lbs	7.31	7.15	6.91
200,000 to 250,000 lbs	7.39	7.23	7.07
250,000 to 300,000 lbs.			r.01
	7.39.	7.23	7.07
300,000 to 350,000 lbs		7.23 7.31	
300,000 to 350,000 lbs	7.47 7.54		7.07
300,000 to 350,000 lbs	7.47 7.54 7.62	7.31	7.07 7.07 7.07
300,000 to 350,000 lbs 350,000 to 400,000 lbs 400,000 to 450,000 lbs 450,000 to 500,000 lbs	7.47 7.54 7.62 7.70	7.31 7.39 7.47 7.55	7.07 7.07 7.07
300,000 to 350,000 lbs	7.47 7.54 7.62 7.70	7.31 7.39 7.47	7.07 7.07 7.07 7.23
300,000 to 350,000 lbs. 350,000 to 400,000 lbs. 400,000 to 450,000 lbs. 450,000 to 500,000 lbs. 500,000 lbs. and over.	7.47 7.54 7.62 7.70	7.31 7.39 7.47 7.55	7.07 7.07 7.07 7.23 7.23
300,000 to 350,000 lbs 350,000 to 400,000 lbs 400,000 to 450,000 lbs 450,000 to 500,000 lbs	7.47 7.54 7.62 7.70 7.78	7.31 7.39 7.47 7.55 7.63	7.07 7.07 7.07 7.23 7.23
300,000 to 350,000 lbs 350,000 to 400,000 lbs 400,000 to 450,000 lbs 450,000 to 500,000 lbs 500,000 lbs. and over Mallet Type: Regardless of weight on drivers	7.47 7.54 7.62 7.70 7.78	7.31 7.39 7.47 7.55 7.63	7.07 7.07 7.07 7.23 7.23
300,000 to 350,000 lbs 350,000 to 400,000 lbs 400,000 to 450,000 lbs 450,000 to 500,000 lbs 500,000 lbs. and over Mallet Type: Regardless of weight on drivers	7.47 7.54 7.62 7.70 7.78	7.31 7.39 7.47 7.55 7.63 6.45	7.07 7.07 7.07 7.23 7.23
300,000 to 350,000 lbs 350,000 to 400,000 lbs 400,000 to 450,000 lbs 450,000 to 500,000 lbs 500,000 lbs. and over Mallet Type: Regardless of weight on drivers	7.47 7.54 7.62 7.70 7.78	7.31 7.39 7.47 7.55 7.63	7.07 7.07 7.07 7.23 7.23
300,000 to 350,000 lbs	7.47 7.54 7.62 7.70 7.78	7.31 7.39 7.47 7.55 7.63 6.45	7.07 7.07 7.07 7.23 7.23

Question 30, Interpretation No. 1, Supplement No. 24:

Schedules of certain railroads provide differentials for divisions or portions thereof, or mountain or desert territory as compared with valley territory. Are such differentials preserved? If so, by what method?

Decision: Such differentials are preserved. Former methods of establishing them are required to be continued. Where expressed in specified amounts of money as compared with valley rates, the same amount of money differential shall be continued.

ARTICLE 5.

Basis for Overtime and When Paid.

- . Sec. 1. In regular passenger service over 100 miles, the basis for computing overtime shall be the time table schedule of the train.
- Sec. 2. In irregular passenger service over 100 miles, the basis for computing overtime shall be the average time table schedule of all regular passenger trains running in the same direction, over the entire territory covered.
- Sec. 3. In passenger service, 100 miles or less, the basis for computing overtime shall be five hours.
- Sec. 4. On districts over 100 miles where no passenger trains are scheduled, the basis for computing overtime in passenger service shall be 20 miles per hour.

Vol. II TRANSCRIPT OF RECORD

Supreme Court of the United States outcome Trans. 1943

No. 27

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY (AN UNINCORPORATED ASSOCIATION), PETITIONER,

tis,

SOUTHERN PACIFIC COMPANY AND GENERAL GRIEVANCE. COMMITTEE OF THE BROTHER-HOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (AN UNINCORPORATED ASSOCIATION)

No. 41

GENERAL GRIEVANCE COMMITTEE OF THE BEOTHEBHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (AN UNINCORPORATED ASSOCIATION), PETITIONER,

08.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE SOUTHERN PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, ETC., ET AL.

OF APPRAIS FOR THE UNITED STATES CIRCUIT COURT

PETITIONS FOR CERTIORARI FILED (MARCH 22, 1943. APRIL 13, 1943.

United States

Circuit Court of Appeals

For the Rinth Circuit.

GENERAL COMMITTEE OF ADJUSTMENT
OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC
LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association,
Appellant,

VS.

SOUTHERN PACIFIC COMPANY, a corporation, and GENERAL GRIEVANCE COM-MITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINE-MEN, an unincorporated association,

Appellees.

Transcript of Record

In Two Volumes VOLUME II

Pages 489 to 787

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Sec. 5. In assigned passenger service, on a trip of over 100 miles, where two or more train numbers are used on one trip, firemen or helpers will be paid overtime on the basis of the combined schedule plus the dead time shown on time table where train numbers change, provided that not more than 45 minutes dead time at point where train numbers change shall be added to the combined schedules of the trains. When the dead time at any point where train numbers change is in excess of five hours, terminal provisions will prevail and firemen or helpers will be considered as beginning a new trip.

Sec. 6. When from any cause the time of a passenger train on the road exceeds its basis for computing overtime, the fireman or helper shall be paid overtime at the rate of 12½ miles per hour.

ARTICLE 6.

Initial, Final and Turning Point Switching

When firemen or helpers in passenger service are required to do initial or terminal switching, or switching at the turning point of an irregular turnaround trip, they shall be paid one-eighth of the daily rate per hour. Such time to be computed separately and paid for in addition to road time.

(Plaintiff's Exhibit No. 2 continued) ARTICLE 7.

Initial and Final Terminal Delays.

- Sec. 1. In passenger service, over 100 miles, when firemen or helpers are held at initial station, they shall be paid one-eighth of the daily rate per hour. Initial delays to be computed from time fireman or helper is ordered to leave and to end with departure of train.
- Sec. 2. In passenger service, final terminal delay shall be computed from the time train reaches the terminal station.
- Sec. 3. Final terminal delay, after the lapse of thirty minutes will be paid for the full delay at the end of the trip, at the overtime rate, according to the class of locomotive, on the minute basis.
- Sec. 4. If road overtime has commenced, terminal overtime shall not apply, and road overtime will be paid to the point of final relief.
- Sec. 5. The mileage from designated track where locomotive is received, to point at which road mileage begins, where one mile or more, will be paid for in addition to the allowed road mileage of the trip.
- Sec. 6. When final terminal delay does not accrue, or road overtime is not made, actual mileage, where one mile or more, will be allowed from passenger station to point of release and paid for in addition to the allowed road mileage of the trip.

Note: In the application of Sections 5 and 6 of this Article, initial and final terminal miles, when payable, will be allowed separately from road trip miles. The following examples are illustrative:

EXAMPLES.

SHORT TURNAROUND PASSENGER SERVICE.

No.	1—Fireman brought on duty A Mileage roundhouse to depot		A.	М.
	Departs A		A.	M.
	Arrives B.	8:20	A.	M.
	Mileage depor to roundhouse			
	Off duty at roundhouse	8:30	A.	M.
	Mileage roundhouse to depot		4	
	Arrives A		P.	M.
	Mileage depot to roundhouse			
	Relieved from duty and final tie-up		P.	M.
	Timetable mileage of trip			
	Overtime paid under 8-within-10 hour around rule after 10 hours.		tui	rn-

Allowance: 100 miles, I hour 35 minutes overtime at pro rata rates, and 3 roundhouse miles covering movements of engine to and from roundhouse at B.

No.	2-Fireman brought on duty A	5:00	A.	M.
	Mileage roundhouse to depot	1.5		
	Departs A *		A.	M.
	Arrives B	7:30	A.	M.
	Mileage depot to roundhouse	1.3		
	Released	7:40	A	M.
	Resumes Duty B	8:30	A	M.
	Alleage roundhouse to depot	1.3		
	Arrives A	11:00	A	M.
	Mileage from depot to roundhouse	1.5		

Allowance: 100 miles and 6 roundhouse miles.

No. 3-Fireman brought on duty A 7:00 A. M. Mileage roundhouse to depot______1.5 7:30 A. M. Departs A Arrives R 12:05 P. M. Mileage depot to roundhouse 1.3 Off duty at roundhouse 12:20 P. M. Mileage roundhouse to depot 1.3 Arrives A 5:05 P. M. Mileage depot to roundhouse. 1.5 Relieved from duty and final tie-up. 5930 P. M. Timetable mileage of trip.... Overtime paid under 8-within-10 hour short turnaround rule after 8 hours.

Allowance: 100 miles, 2 hours 30 minutes overtime at pro rata rates, and 3 roundhouse miles at B.

STRAIGHTAWAY PASSENGER SERVICE

No. 4	-Fireman brought on duty A	6:00	A.	M.
	Mileage roundhouse to depot	2.6		
	Departs A	6:30	A	M.
	Arrives B	1:00	P	M.
	Mileage depot to roundhouse	2:2		
	Relieved from duty and final tie-up	1:15	P. 7	M.
	Timetable mileage of trip	250		
	Timetable schedule of train	7 Ho	urs	
	Allowance: 250 miles, 5 roundhouse miles.			

No.	5-Fireman brought on duty A	6:00	A:	M.	
	Mileage roundhouse to depot				
	· Departs A		A.	M.	
	Arrives B	1:00	P.	M.	
•	Mileage depot to roundhouse	1.5			
٠.	Relieved from duty and final tie-up	1:40	P.	M.	
	Timetable mileage of trip	250			
	Timetable schedule of train	7 Ho	urs		

Allowance: 250 miles, 3 initial roundhouse miles and 40 minutes terminal delay at pro rata rates.

No. 6	-Fireman brought on duty A	7:00	A.	M.
	Mileage roundhouse to depot	3.2		
٠.	·Departs A	7:30	Á.	M.
	Arrives B	11:30	A.	M.
	Mileage depot to roundhouse	1.5		
	Relieved from duty and final tie-up	11:50	A.	M.
	Timetable mileage of trip	94		
	·Allowance: 100 miles and 5 roundhouse	miles.		

No.	7-Fireman brought on duty A	7:00	'A.	M.
	Mileage roundhouse to depot	1.2		
	Departs A		A.	M.
	Arrives B	:11:30	A.	M.
	Mileage depot to roundhouse	1.5	•	
	Relieved from duty and final tie-up	12:05	P.	M.
	Timetable mileage of trip	94		*

Allowance: 100 miles, 1 initial roundhouse mile and 35 minutes terminal, delay at pro rata rates.

ARTICLE 8.

Mixed Service.

Sec. 1. When four or more freight cars, either loaded or empty, or when four or more baggage cars or express refrigerators containing freight

under freight billing, are handled in conjunction with overland passenger service, or when two or more freight cars, either loaded or empty, or when two or more baggage cars or express refrigerators containing freight under freight billing, are handled in conjunction with branch or local passenger service, firemen and helpers shall be paid full freight rates for the entire trip.

Sec. 2. When one or more freight cars, either loaded or empty, or when one or more baggage cars or express refrigerators containing freight under freight billing, are handled, picking up or setting out cars en route, in conjunction with branch or local passenger service, firemen and helpers shall be paid full freight rates for the entire trip; except on dates on which freight is loaded or unloaded or transferred to and from car en route, firemen and helpers shall be paid local freight rates for the entire trip.

ARTICLE 9.

Officers' Specials.

Firemen or helpers handling Southern Pacific Officers' Specials, annual inspection trains, examination car, circus or carnival trains, valuation specials, motion picture trains or test trains, may be tied up at other than established district or division terminals, and time so tied up deducted, provided a minimum of 150 miles, including over-

time at road rates, will be allowed for each day engaged in or held for such service and not tied up at terminals. It is understood that delays of less than eight hours at any point other than terminals will not be considered as being tied up, and time so delayed will not be deducted in computing time for road trip of that day. Where trip in such service is made from terminal to terminal, this rule does not apply.

Firemen or helpers en route to point where such service begins, or are returning to their assigned territory after being relieved from such service, will be paid under this rule.

Test trains as referred to in this Article will be classified as follows:

1.	Testing	Air	Brakes.

2. Testing Capacity of Locomotives,

3. Testing Automatic Train Control,

4. Testing Automatic Block Signals.

1st. Switching and spotting of circus train equipment and overtime of road trip will be included in arriving at minimum of 150 miles, except at terminals where yard crews are on duty, firemen will receive initial and terminal switching if required to perform switching and spotting of circus at such point.

2nd. If crew runs, for example, twenty miles, picks up circus train, or vice versa, such light movement will be included in regular circus train day.

3rd. Crews handling circus trains will not be run through established division terminals when other crews are available. If run through, they will start a new day.

4th. Crews handling circus trains will be paid through freight rates according to class of engine and district on which used, and pooled firemen will be used when available when run over districts to which pooled crews are assigned.

ARTICLE 10.

Doubling on Grades.

When firemen or helpers in passenger service are required to double on grades, or run for fuel or water, ten miles will be allowed. In case the mileage exceeds ten miles the actual mileage shall be allowed. On runs over 100 miles, actual time consumed in doubling to be added to the schedule of the train in computing overtime.

ARTICLE 11.

Mountain Districts-Excess Mileage.

Between the following named points mileage in excess of actual distance between such points shall be allowed, viz:

	Actual Mileage	Allowed Mileage
Passenger Service Between:		
Roseville to Truckee	99	-107
Truckee to Roseville/	101	109
Bakersfield and Mojave	. 68	75
Red Bluff and Dunsmuir	99	105
Gerber and Dunsmuir	109	115
Bakersfield and Los Angeles	170	175

	Actual Mileage	Allowed
Freight Service Between:		
Los Angeles and Mojave	100	105
Mojaye and Bakersfield		,75
Sacramento to Truckee	.: 118	150
Truckee to Sacramento		152
Roseville to Truckee	99	119
Truckee to Roseville		. 121
Roseville and Summit		104
Roseville to Norden	85	102
Norden to Roseville		103
Colfax and Summit	51	61
Colfax and Norden	50	60 -
Colfax to Truckee	64	77
Truckee to Colfax	65	78
Red Bluff and Dunsmuir	99	138
Gerber and Dunsmuir	109	148
Dunsmuir and Ashland	108	139
Dunsmuir and Hornbrook	72	101
Hornbrook and Ashland	/ 36	50
Ashland and Roseburg	.1431/2	1441/2

Allowed mileage stated as per this Section will not be allowed on runs not covering the entire distance between points named.

Question 46, Interpretation No. 1, Supplement No. 24:

Are schedule rules providing that constructive mileage be allowed on certain divisions, or portions of divisions, affected?

Decision: No.

ARTICLE 12.

Trip Rate for Different Services and on Locomotives of Different Weights.

Sec. 1. Road firemen or helpers performing more than one class of road service in a day or trip will be paid for the entire service at the highest rate applicable to any class of service performed; except when used in freight or passenger service over part of trip and balance run light, will be paid on the same basis as the crew which is helped. The overtime basis for the rate paid will apply for the entire trip.

It is understood that under the above rule excess mileage shown in Article 11 will not be paid unless service covers the entire specified territory.

Sec. 2. When two or more locomotives of different weights on drivers are used during a trip or day's work, the highest rate applicable to any engine used will be paid for the entire day or trip.

ARTICLE 13.

Freight Service.

Sec. 1. The minimum rate for firemen and helpers in through and irregular freight, pusher and helper, mine run or roustabout, belt line or transfer, work, wreck, construction, snow-plow, circus train, messenger, light engines, trains established for the exclusive purpose of handling milk, and all other unclassified service, shall be according to class of

(Plaintiff's Exhibit No. 2 continued) locomotive and district, for eight hours or less, 100 miles or less, miles made in excess of 100 pro rata.

Note: It is understood that it is not obligatory to use firemen to perform messenger service. When firemen are used, they will be taken from pool freight list.

Note: It is understood that the terms "pusher" and "helper" are synonymous, meaning "helper service."

Question 31, Interpretation No. 1, Supplement No. 24:

Where mine run, belt line, or transfer service, pusher and helper service, etc., was formerly paid yard rates, and is by this Article paid the same rates as through freight service, is such service now subject to road conditions, such as terminal switching allowances, final terminal delays, etc.?

Decision: No; but through freight rules as to mileage, and road overtime shall apply.

Question 36, Interpretation No. 1, Supplement-No. 24:

Does this section place express trains, mail trains, etc., in unclassified service?

Decision: These trains are generally classed as passenger service, and the order does not change their former classification.

Sec. 2. On valley districts the minimum freight rate per day shall be:

Weight	on Drivers		Cont	on	Helpers
Less tha	n 80,000	lbs.	\$5.79	\$5.79	\$5.79
		lbs.		5.79	5.79
		lbs.		5.87	5.79
		lbs. · ·		6.03	5.79
170,000 t	o 200,000	lbs.	6.35	6.19	5.79
		lbs.		6.52	5.95
		lbs.		6.67	5.95
300,000 t	0 350,000	lbs.:	6.92	6.92	5.95
		ver		6.99	5.95
Mall	et Type:				
		lbs	6.99	6.99	
		ver		7:30	
Artic	ulated Co	nsolidation :			
		lbs.	*******	7.30	
450,000 t	o. 500,000	lbs.		7.30	.7
500,000 t	o 550,000	· lbs.	selver con	7.30	
*					

Note: On simple locomotives, cylinders 24 inches or over in diameter, the rate shall be \$6.58 when weight on drivers as tabulated in this Section does not establish a higher rate than \$6.58.

Oil differential not to apply on locomotives weighing over 215,000 lbs. on drivers,

Sec. 3. On lines east of Sparks the minimum freight rate per day shall be:

^	Sur rate ber and						
	Weight on Drivers			Coal	oa	Helpers	
	Less than 80,000	lbs.		\$5.95	\$5.79	\$5.79	
	80,000 to 100,000	lbs		6.04	5.91	5.91	
	100,000 to 140,000	lbs		6.19	6,03.	5.95	
	140,000 to 170,000	lbs		: 6.27	6.12	5.88	
	170,000 to 200,000	lbs		6.35.	6,19	5.79	
	200,000 to 250,000	1bs		6.52	6.52	5.95	
	250,000 to 300,000				6.67	5.95	
	300,000 to 350,000	lbs.	•	6.92	6.92	9.95	
	350,000 lbs. and o	ver		6.99	6.99	5.95	
			5 2				ò

Ma	llet	Type:					
Less tha	an :	275,000	lbs	ene American	6.9	99	6.99
275,000	lbs	and o	ver	(0	7.	30	7.30
Art	ieu	lated Co	onsolid	ation:			• .
400,000	to	450,000	lbs		,	10.	7.30
450,000	to	500,000	lbs		. \$		7.30
500,000	-40	550,000	lbs				7.30

Note: On simple locomotives, cylinders 24 inches or over in diameter, the rate shall be \$6.58 when weight on drivers as tabulated in this Section does not establish a higher rate than \$6.58.

Oil differential not to apply on locomotives weighing over 215,000 lbs. on drivers.

Sec. 4. Between Phoenix and Hassayampa, Phoenix and Maricopa, Phoenix and Christmas, Phoenix and Casaba, the minimum freight rate per day shall be:

Ç.		Fire	men	Hel	pers /
-	Weight on Drivers	Through	· Local	Through	Local
	Less than 80,000 lbs.	\$6.25	\$6.25	\$6.25	\$6.25
	80,000 to 100,000 lbs.	6.25	6.27	6.25	6.27
	100,000 to 140,000 lbs.	6.25	6.43	6.17	6.35
	140,000 to 170,000 lbs.	6.25	-6.59	6.01	6.35
	170,000 to 200,000 lbs.	6.35	6.75	5.95	6.35
	200,000 to 250,000 lbs.	.6.52	6.92	5.95	6.35
	250,000 to 300,000 lbs.	6.67	7.97	5.95	6.35
	300,000 to 350,000 lbs.	6.92	7.32	5:95	6.35
	350,000 lbs. and over-	6.99	7.39	5.95	6.35
	Mallet Type:				
	Less than 275,000 lbs.	6.90	- 7.39		
	275,000 lbs. and over	7.30	7.70		
	Articulated Consol	idation :	*		
	400,000 to 450,000 lbs.		\$7.70		
	450,000 to 500,000 lbs.		7.70		
	500,000 40 550,000 11.0	7 20	7.70		

Note: On simple locomotives, cylinders 24 inches or over in diameter, the rate shall be \$6.58 when weight on drivers as tabulated in this Section does not establish a higher rate than \$6.58.

Sec. 5. Between Bowie and Miami, the minimum freight rate per day shall be:

Fire	men	Help	pers
Through	Local	Through	Local
\$5.79	*6.19	\$5.79	\$6.19
5.79	6.19	5.79	6.19
6.03	6.43	5.95	6,35
6.19	6.59	5,95	6.35
6.35	6.75	5.95	6.35
6.52	6.92	5.95	6,35
6.67	7.07	5,95	6.35
6.92	7.32	5,95	6,35
6.99	7.39	5.95	6.35
* .			
		15	
7.30	7.70		
ion:		٠.	
	7.70		
	7.70	•	
7.30	7.70		
	*5.79 \$5.79 \$5.79 6.03 6.19 6.52 6.52 6.52 6.99 7.30 7.30 7.30 7.30	\$5.79 \$6.19 5.79 6.19 6.03 6.43 6.19 6.59 6.35 6.75 6.52 6.92 6.67 7.07 6.92 7.32 6.99 7.39 \$\frac{1}{3}\$\$ 7.70 \$\frac{1}{3}\$\$ 7.70 \$\frac{1}{3}\$\$ 7.70	Through Local Through \$5.79 \$6.19 \$5.79 5.79 6.19 5.79 6.03 6.43 5.95 6.19 6.59 5.95 6.35 6.75 5.95 6.52 6.92 5.95 6.67 7.07 5.95 6.92 7.32 5.95 6.99 7.39 5.95 6.99 7.39 5.95 ion: 7.30 7.70

Note: On simple locomotives, cylinders 24 inches or over in diameter, the rate shall be \$6.58 when weight on drivers as tabulated in this Section does not establish a higher rate than \$6.58.

Sec. 6. On trips 100 miles or less between Bakersfield and Los Angeles, Mojave and Owenyo, Sacramento and Sparks, Gerber and Ashland, Dunsmuir and Klamath Falls, Klamath Falls and Wendel, including Lakeview Branch, Ashland and Roseburg,

Eugene and Klamath Falls, Los Angeles and Indio, including branches between Los Angeles and Indio, (mountain districts), the minimum freight rate per day shall be:

shall be:			
Weight on Drivers	Coal	Oil	Helpers
Less than 80,000 lbs.	\$6.27	\$6.28	\$6.28
80,000 to 100,000 lbs		6.28	6.28
100,000 to 140,000 lbs	6.39	6.23	6.15
140,000 to 170,000 lbs	6.56	0.41	6.17
170,000 to 200,000 lbs.	6.73	6.57	6.17
200,000 to 250,000 lbs	6.89	6.89	6.32
250,000 to 300,000 lbs		7.05	6.33
300,000 to 350,000 lbs.	7.30	7.80	6,33
350,000 lbs. and over	7.37	7.37	6.33
Mallet Type:			
Less than 275,000 lbs	6.99	6.99	
275,000 lbs. and over	7.30	7.30	
		,	
Articulated Consolidation:			
400,000 to 450,000 lbs			
450,000 to 500,000 lbs		7.62	
500,000 to 550,000 lbs		7.80	
Between Roseville and Truckee	:	-	
Weight on Drivers	Coaff	Oil.	Helpers
140,000 to 170,000 lbs.	\$7.03	\$7.08	\$6.84
170,000 to 200,000 lbs	7.20	7.24	6.84
200,000 to 250,000 lbs	7.50	7.70	7.13
250,000 to 300,000 lbs	7.52	7.58	6.86
300,000 to 350,000 lbs	7.77	7.97	7.00
200,000 to 250,000 lbs	7.84	8.04	7.00
Articulated Consolidation :		way .	
400,000 to 450,000 lbs.s.		8.04	
450,000 to 500,000 lbs		8.04	
500,000 to 550,000 lbs		8.04	

Note: On simple locomotives, cylinders 24 inches or over in diameter, the rate shall be \$6.58 when weight on drivers as tabulated in this Section does not establish a higher rate than \$6.58.

Rates named between Roseville and Truckee not to apply when crews are cut out at Blue Canon.

Oil differential not to apply on locomotives weighing over 215,000 lbs. on drivers.

Sec. 7. On trips over 100 miles between Bakersfield and Los Angeles, Mojave and Owenyo, Sacramento and Sparks, Gerber and Ashland, Dunsmuir and Klamath Falls, Klamath Falls and Wendel, including Lakeview Branch, Ashland and Roseburg, Eugene and Klamath Falls, Los Angeles and Indio, including branches between Los Angeles and Indio, (mountain districts), the minimum freight rate per day shall be:

Weight on Drivers	. ,	Coal	Oil	Relpers
Less than 80,00	0 lbs.	\$6.60	\$6.62	\$6.62
80,000 to 100,00	00 lbs	6.54	6,48	6.48
100,000 to 140,00	00 lbs	6.73	6.56	6.48
140,000 to 170,00	00 lbs	6.90	6.75	6.51
170,000 to 200,00			6.90	6.50
200,000 to 250,00	00 lbs.	7.23	7.23	6.66
250,000 to 300,00	00 lbs.	7.38	7.38	6.66
300,000 to 350,00	00 lbs.	7.63	7.63	6.66
350,000 lbs. and	over	7.70	7.70	6,66
Articulated ('onsolidation:		. ,	
400,000 to 450,00	00 lbs		7.70	
450,000 to 500,00	00 lbs.		7.80	,
500,000 to 550,00	00 lbs.		7.98	

(Plaintiff's Exhibit No. 2 continued) Between Roseville and Truckee:

Weight on Drivers	Coal	on	Helpers
140,000 to 170,000 lbs.	\$7.37	\$7.42	\$7.18
170,000 to 200,000 lbs.	7.53	7.57	7.17
200,000 to 250,000 lbs	7.83	8:03	7.46
250,000 to 300,000 lbs	7.85	8.05.	7.33
300,000 to 350,000 lbs	8.10	8.30	7.33
350,000 lbs. and over	8.17	8.37	7,33
Mallet Type:	1		
Less than 275,000 lbs.	6.99	6.99	
275,000 lbs. and over	7.30	7.30 .	
Articulated Consolidation:			
400,000 to 450,000 lbs		8.37	
450,000 to 500,000 lbs		8.37	
500,000 to 550,000 lbs		8.37	

Note: On simple locomotives, cylinders 24 inches or over in diameter, the rate shall be \$6.58 when weight on drivers as tabulated in this Section does not establish a higher rate than \$6.58.

Note: Firemen operating eastbound Roseville to Truckee will be allowed rates tabulated in this Section applicable to runs of over 100 miles between Roseville and Truckee.

Rates named between Roseville and Truckee not to apply when crews are cut out at Blue Canon.

Oil differential not to apply on locomotives weighing over 215,000 lbs. on drivers.

If a type of locomotive is introduced on a railroad which formerly was not in use on that railroad, and the rates herein provided are less than those in effect on other roads in the territory, the rates of the other roads shall be applied.

Question 30, Interpretation No. 1, Supplement No. 24:

Schedules of certain railroads provide differentials for divisions or portions thereof, or mountain or desert territory as compared with valley territory. Are such differentials preserved? If so, by what method?

Decision: Such differentials are preserved. Former methods of establishing them are required to be continued. Where expressed in specified amounts of money as compared with valley rates, the same amount of money differential shall be continued.

ARTICLE 14.

Assigned Turnaround Freight Service.

Sec. 1. Firemen or helpers assigned to a series of branch freight, combination freight and passenger, or mixed runs, or established main line turnaround local freight service, will compute their time as a single trip. Bulletin shall specify number of trips, name terminals and turning points and will definitely specify kind of service to be performed. In no case shall any poon of the assignment include trip or trips in hoper service.

Note: Last sentence agreed to with the understanding that this will not set aside or supersede decisions wherein crews were used to push trains out of yard within yard limits.

Sec. 2. Continuous time to be allowed from time fireman is required to report for duty on initial

trip and to end upon completion of final trip of assignment with a minimum of 100 miles. On runs of 100 miles or less, overtime will begin at the expiration of eight hours; on runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by 12½. Overtime shall be paid for on the minute basis at an hourly rate of 3/16 of the daily rate according to class of engine or other power used. When miles run exceed these limits, actual miles will be allowed.

Question: Assignment under this Section, A to B and return, distance 90 miles round trip; thence in opposite direction A to C and return, distance 59 miles; total mileage of assignment 149 miles. On a certain date crew consumes 11 hours 45 minutes making trip A to B and return, and are released without making trip A to C and return. How should they be compensated?

Decision: Allow 149 miles, mileage of assignment, and overtime, if any, after schedule of 11 hours and 55 minutes.

Sec. 3. Firemen or helpers assigned under this rule who are required to perform work not a part of regular assignment, such as pulling trains into terminal account crew of which tied up under law, engine failure, or account shortage of fuel or water in locomotive, will be paid a minimum of 100 miles for each time so used in addition to assignment; in like manner, when firemen or helpers en route are taken off assignment and required to bring engine

law, or account engine failure, or shortage of fuel or water in locomotive, will be paid a minimum of 100 miles for each time so used in addition to assignment. If used en route to make side trip off assigned territory and such trip covers a distance of more than twelve miles in one direction, a minimum of 100 miles will be allowed in addition to assignment. In each case rates and rules covering such service will govern. Actual time in other service to be excluded in computing overtime in assigned service. Under the above conditions, crew used to bring disabled train to terminal will compute time as a single trip from time of leaving assignment until return thereto with a minimum of 100 miles.

Note: In cases where main track is obstructed due to derailments, engine failure, break-in-twos, and traffic is threatened with serious delay and assigned crews under this Article are used to assist in relieving obstruction, questions of runarounds will be disposed of on their merits between representatives of the Company and firemen.

Sec. 4. Switching before beginning of first trip and after the completion of final trip will be computed separately and paid for at one-eighth of the daily rate applying to class of engine, service and district on the minute basis, irrespective of time on road. Switching time to be continuous from the time work is begun until it is completed and train coupled together. This time not to be counted in computing

road overtime; except that when the number of hours switching is not equal in money value to the sum of the money values of switching hours and foad overtime hours; switching time shall not be paid for and the road overtime shall be calculated and paid for the same as if switching had not occurred.

Example-

Required to report at A	7:00	A.	M.
Switches at A until	9:00	Α.	M.
Runs A to B, return A,			
distance 100 miles	3:00	Ρ.	М.
Switches at A until	5:00	P.	M.
Relieved A	5:00	P.	M.

Compensation: 100 miles, plus 4 hours switching at one-eighth of daily rate. Such allowance being greater than two hours overtime at time and one-half.

Example-

Required to report at A: 7:00	A.	M.
Switches at A until, 8:00	Α.	M.
Runs A to B, return A 4:00	1.	M.
Switches at A until 5:00	P.	M.
Relieved A 5:00		4

Compensation: 100 miles, plus 2 hours overtime at three-sixteenths of the daily rate per hour. In this case the money value of the road overtime at three-sixteenths of the daily rate exceeds the allow-

(Plaintiff's Exhibit No. 2 continued) ance of two hours switching at one-eighth of the daily rate.

Note: Section 6 of Article 17 and examples thereunder shall apply to this Article.

Sec. 5. Assignments of firemen to three-legged trips with alternating layovers shall be made under Section 1, and compensation shall be under Sections 2, 3 and 4 of this Article.

ARTICLE 15.

Local or Way Freight.

Sec. 1. Except as provided in local rates tabulated in Sections 4 and 5 of Article 13, a minimum of forty cents per hundred miles, or less, will be added for local freight service to through rates for firemen or helpers, according to class of locomotive and district. Miles over one hundred to be paid for pro rata.

Sec. 2. In addition to assigned local freight trains, firemen handling freight or mixed trains on which 5,000 pounds or over L. C. L. freight is loaded or unloaded per trip, when required to pick up or set out car or cars at more than four stations en route between the terminals of their run (this not to include setting out disabled cars; picking up or setting out water cars for train engine use only), or who perform industrial or station switching between terminals, will be paid local freight rates.

Movements made in connection with loading or unloading, picking up or setting out cars for stock to be loaded or unloaded, or setting out and spotting

cars from own train and picking up cars into own train, and the spotting of cars disturbed as result of either of the above movements, is not industrial or station switching as mentioned in this Section.

Sec. 3. Where, under schedule rules or accepted practices, a part of the crew receives local freight rates, the firemen or helper will receive not less than the local freight rates.

On districts where there is no local freight differential applying to conductors or trainmen, and a fireman in through freight service is required to perform switching at stations en route that would entitle train crew to local freight rates, were there a local freight differential, firemen will be allowed local freight rates.

ARTICLE 16.

Basis for Overtime and When Paid.

Sec. 1. In all classes of service covered by Article 13, 100 miles or less, eight hours or less (straightaway or turnaround), shall constitute a day's work; miles in excess of 100 will be paid for at the mileage rates provided, according to district, class of engine or other power used.

Question 47, Interpretation No. 1, Supplement No. 24:

Certain railroads formerly paid 100 miles between terminals, notwithstanding the distance may have been less than 100 miles. Does this Article permit operating turnarounds turning at terminal on continuous time and mileage?

Decision: No. Schedule rules and accepted practices will govern.

Sec. 2. On runs of 100 miles or less, overtime will begin at the expiration of eight hours; on runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by 12½. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate, according to district, class of engine or other power used.

ARTICLE 17.

Initial and Final Terminal Switching Freight Service.

- Sec. 1. Firemen in freight service making a trip between terminals required to do initial or terminal switching shall be paid for all time so consumed at one-eighth of the daily rate per hour, applying to class of engine, service and district on the minute basis; such time to be computed separately from road overtime and paid for irrespective of time consumed on the road. This time not to be counted in computing road overtime; except that when the number of hours switching is not equal in money value to the sum of the money values of switching hours and road overtime hours, switching time shall not be paid for and the road overtime shall be calculated and paid for the same as if switching had not occurred.
- Sec. 2. In calculating the time engaged in switching, time will be continuous from time work is begun until it is completed and train coupled together,

except in cases where train is made up on two tracks and not coupled together account insufficient track room to clear other trains, the time between the time switching is completed and train is coupled together will not be calculated as initial switching. If on arrival at terminal crew is required to double portion of their train onto another track time so consumed is not terminal switching. If required to make more than one double, time consumed doubling will be calculated as terminal switching.

- Sec. 3. Firemen, after arrival at final terminal, inducted into terminal switching will be compensated under terminal switching rules of agreement from time terminal switching commenced until engine is placed on designated relieving track or fireman is relieved at terminal.
- Sec. 4. Firemen required to perform six hours or more initial switching will be allowed 30 minutes to eat at the initial terminal, computed as part of the initial switching time. In cases where on arrival terminal fireman has been on duty six hours without eating and there in in excess of one hour terminal switching to be performed he will be allowed 30 minutes to eat computed as part of the terminal switching time.
- Sec. 5. When road firemen entitled under agreement provisions to initial and terminal switching are required, before departing initial terminal or after arrival at final terminal of run, to spot cars of gravel or other maintenance of way material for loading or unloading, in connection with other ter-

(Plaintiff's Exhibit No. 2 continued)
minal switching, such service will be compensated
for under initial and terminal switching rules of
agreement.

Note: When there is sufficient work on any certain date to consume the time of a crew to perform a combination of yard service and maintenance of way work a crew will be called for this purpose.

Sec. 6. If a fireman or helper is not on overtime on arrival at the final terminal, but the overtime period commences before final release, terminal switching accruing up to the period when overtime commences will be allowed at one-eighth of the daily rate, but time thereafter shall be paid on the actual minute basis at three-sixteenths of the daily rate.

Examples.

No.	1-Required to report at A	7:00	A.	М.	
	Switches at A until	-7:30	A.	M	
	Leares A	.7:30	A.	M.	
*	Runs A to B, a distance of less			4	
	than 100 miles	*	*	- "	
	Arrives at B	1:30	18	M.	
	Switches at B until	2:00	P.	M.	
	Relieved at B	2:00	P.	M.	
-					

Compensation: 100 miles, plus 30 minutes initial switching and 30 minutes terminal switching at one-eighth of the daily rate.

No.	2-Required to report at A	7:00	Α.	M.
	Switches at A until	00:6	1.	M.
	Leaves A at 9:00 A. M. and runs			
7	to B, 100 miles			
1.	Relieved at B	4:00	P.	M.

Compensation: 100 miles, plus 2 hours switching at one-eighth of the daily rate; such allowance being greater than one hour overtime at one and one-half time.

No.	3-Required to report at A	7:00	A.	M
	Switches at A until	7:30	A.	M
	Runs A to B, 100 miles			
11.5	. Arrives at B	4:30	P.	M
	Switches at B, 1 hour			
	Relieved at B	5:30	P.	M.

Compensation: 100 miles, plus 2 hours 30 minutes overtime at three-sixteenths of the daily rate.

Note: This on account of initial and terminal switching being absorbed by overtime.

No.	4-Required to report at A	7:00	A.	M.
	Switches at A until	7:45	A:	M.
	Runs A to B, 100 miles		,	
	Arrives at B.	3:45	P.,	M.
	Switches at B, 45 minutes		7	
	Relieved at B	4:30	P.	M.

Compensation: 100 miles, plus 1 hour 30 minutes over time at three-sixteenths of the daily rate.

Note: This on account of initial and terminal switching being absorbed by overtime.

	No.	5-	-Required to report at A	7:00	A.	M.
			Switches at A until	7:30	A.	M.
			Runs A to B, 100 miles			٠,
			Arrives at B	3:00	P.	M.
•			Relieved at B	3:10	P.	M

Compensation: 100 miles, plus 30 minutes initial switching at pro rata hourly rate and not at time and one half.

No.	6-Required to report at A			7:00	۸.	M.
2.	Delayed at A			7:20	1.	M.
	Runs A to B, 100 miles					
	· Arrives at B.			2:50	p.	M.
,	. Switches at B, 10 minutes				4	
	Relieved at B	1	•	3.00	P	M

Compensation: 100 miles and 10 minutes terminal switching at pro rata hourly rate and not at time and one-half

No.	7-On duty A		6:50	A.	M.
	Switched A .	7:00 A. M.	to 9:00	·A.	M.
1	Departed A.		9.10	1.	M.
	Runs A to B, 100 mi	les			
1	Arrived B		3:00	P.	M.
	Switched B	3:00 P. M.	to 4:00	P:	M.
	Relieved B		4:10	P.	M.

Compensation: 100 miles, 2 hours initial switching A. at 18th of the daily rate, computed from 7:00 Å. M. to 9:00 Å. M.; 1 hour 10 minutes terminal switching B at 18th of the daily rate, computed from 3:00 P. M. to 4:10 P. M.

. No	8—On duty A		6:00	1.	M.
	Switched A	6:10 A. M. to	8:10	A.	M.
	Departed A		8:30	Α.	M.
a.m	Runs A to B, 100-nrile	s S			
	Arrived B		3:00	P.	M.
	Switched B	3:00 P. M. to	5:00	P.	M.
	Relieved B		5:05	P.	M.
•		Il no no go an acionito	in facilities and	Sec. 4	

Compensation: 100 miles, 2 hours initial switching A. at 15th of the daily rate, computed from 6:10 A. M. to 8:10 A. M.; one hour at 15th of the daily rate, computed from 3:00 P. M. to 4:00 P. M.; and one hour, 5 minutes at 3/16ths of the daily rate, computed from 4:00 P. M. to 5:05 P. M., terminal switching at B.

Note: Under Example No. 8, payment for terminal switching at 3/16ths of the daily rate per hour begins at 4:00 PM due to the fact that road overtime accrues before switching is completed, terminal switching 3:00 P. M. to 4:00 P. M., being paid at 15th of the daily rate.

No. 9-	On duty A		9:15. 1.	M.
	Departed A		·9:50 A.	M.
	No switching performe	d		
	Runs A; to B, 100 miles			
	Arrived B	,	.3:15 P.	M.
	Switched B (4 hrs., 20	min.)	3	
		3:25 P. M. to	7:45 P:	M.
				31

Compensation: 100 miles, I hour 50 minutes final terminal switching at 15th of the daily rate from 3.25 P. M. to 5:15 P. M.; 2 hours 30 minutes final terminal switching at 3/16ths of the daily rate from 5:15 P. M. to 7:45 P. M.

No.	10—On duty A		7:00 A	M
	Switches A			
	Leaves A	100000100000000	9:00 A	. M.
	Runs A to B, 100 m			
	Relieved B		 4:20 P	. M.

Compensation: Either 100 miles plus 2 hours switching at 1/8th of the daily rate, or 100 miles and I hour 20 minutes road overtime at 3/16ths of the daily rate per hour, because the money value of the switching allowance and the money value of the road overtime at 3/16ths of the daily rate are equal.

No. 11	—On duty A	7:00	À.	M.
	Switches A	9:00	Α.	M.
	Leaves A			
	Relieved B was as as as as as as as	5:00	P.	M.

Compensation: 100 miles plus 2 hours overtime at 3/16ths of the daily rate per hour. In this case the money value of the road overtime at 3/16ths of the daily rate exceeds the allowance of 2 hours switching at 15th of the daily rate.

No.	12—On duty A		7:0	0 A.	M.
	Switches A				
	Does not depart A				. 7
	Crew relieved A	 	11:2	0 A.	M.

Compensation: 100 miles, 4 hours and 10 minutes initial switching.

In connection with above examples, it is understood as provided in Section 1 of Article 17, Firemen's Agreement, that when the number of hours

switching is not equal in money value to the sum of the money values of switching hours and road overtime hours, switching time shall not be paid for and the road overtime shall be calculated and paid for the same as if switching had not accrued.

ARTICLE 18.

Final Terminal Delay Freight Service.

- Sec. 1. If road overtime has commenced, terminal overtime shall not apply and road overtime will be paid to the point of final release.
- Sec. 2. For freight service, final terminal delay shall be computed from the time the engine reaches designated main track switch connection with the yard track.
- Sec. 3. If road overtime has not commenced, final terminal delay after the lapse of thirty minutes will be paid for the full delay at the end of the trip.
- Sec. 4. When fireman or helper reaches the final terminal before overtime commences, calculated from the time of reporting for duty, terminal delay will be allowed at one-eighth of the daily rate.
- Sec. 5. If the fireman or helper is not on overtime on arrival at the final terminal, but the overtime period commences before final release, terminal delay accruing up to the period when overtime commences will be allowed at one-eighth of the dailyrate, but time thereafter shall be paid on the actual

sec. 6. The mileage from designated track where locomotive is received, to point at which road mileage begins, where one mile or more, will be paid for in addition to the allowed road mileage of the

trip.

Sec. 7. When final terminal delay does not accrue, or road overtime is not made, actual mileage, where one mile or more, will be allowed from designated switch to point of release and paid for in addition to the allowed road mileage of the trip.

Sec. 8. When freight train on arrival at final terminal of run is required to come to stop before reaching designated switch from which terminal delay is computed, on account of a preceding train standing between them and the designated switch, terminal delay will be computed from time train comes to stop behind the train that is blocking them.

Note: In the application of Sections 6 and 7 of this Article, initial and final terminal miles, when payable, will be allowed separately from road trip miles. The following examples are illustrative:

Examples:

1					
Na 1-	Fireman brought on duty	8:00	Λ.	M.	
	Departs initial terminal				
	Arrives final terminal	 5:00	P.	·M.	
	Relieved final terminal				
·	Mileage of trip	 90			Þ
	Mileage roundhouse to yard.	-			
	initial terminal	2.1			
	Mileage yard to roundhouse.	•			
	final terminal	 2.1		*	

Allowance: 100 road miles and 1 hour 10 minutes overtime at 3/16ths. No allowance for roundhouse miles, either initial or final terminal.

No.	2-Fireman brought on duty	8:00 A. M.
	Departs initial terminal	8:20 A. M.
-	Departs initial terminal Arrives final terminal	2:00 P. M.
	Switches at B-50 minutes	*
10.	2:00 P. M.	to 2:50 P. M.
	Relieved final terminal	
1	Mileage of trip	
	Mileage roundhouse to yard,	7
	initial terminal	1.4
	Mileage yard to roundhouse,	
	final terminal	2.1
	- Allowance: 100 road miles, 1 init	
	mile and 1 hour swite	
	terminal roundhouse	
	termina roundinouse.	
No.	3-Fireman brought on duty	8:00 A: M.
	Departs initial terminal	8:20 A. M.
	Arrives main track designated st	
**	final terminal	
	Relieved final terminal	
•	Mileage of trip	
	Mileage roundhouse to yard,	•

Allowance: 100 road miles, 45 minutes final terminal delay and 2 initial roundhouse miles. No final terminal roundhouse miles.

No. 4—Fireman brought on duty 9:20 P. M.
Departs initial terminal 10:55 P. M.
Arrives final terminal 4:55 A. M.
Relieved final ferminal 5:35 A. M.
Mileage of trip 90
Mileage roundhouse to yard,
initial terminal 7.16

initial terminal.

Mileage vard to roundhouse,

2:40 P. M.

2:50° P. M.

(Plaintiff's Exhibit No. 2 continued)

Allowance: 100 road miles, 7 initial roundhouse miles, 25 minutes terminal delay at 1/8th of the daily rate and 15 minutes at 3/16ths of the daily rate.

No.	5-Fireman brought on duty		_8:00	A. M.
	Departs initial terminal	*	8:20	A. M.
	Arrives final terminal	are at the first	2:40	P. M.
	Relieved final terminal		2:50	P. M.
	Mileage of trip			
	Mileage yard to roundhouse,			•
	final terminal	.9'	1.6	
-	Allowance: 100 road miles	and 2	round	house
	miles.			
No.	6-Fireman brought on duty			
	Departs initial terminal		8:20	A. M.
	Arrives final. terminal		2:40	P. M.
	Relieved final terminal			P. M.
	Mileage of trip		75	
	Mileage yard to roundhouse,			
	final terminal		2.1	*
	* Allowance: 100 road, miles	and 2	round	house
	miles.			
N's	7-Fireman brought on duty		0.00.	: ::
	Departs initial terminal		8:00	A. M.
	Departs initial ferminal		8:20	A. M.
	Arrives final terminal		2:40	P. M.
	Released final terminal		2:50	P. M.
	Mileage of trip		(0)	
•	Mileage roundhouse to yard.			
	initial terminal		1.2	
	Mileage yard to roundhouse.			
	final terminal		1.2	
	Allowance: 100 road miles	and 2	round	house
	miles.			
Vo.	S Firm Lands		3000	
	8-Fireman brought on duty		8:00	
	Departs initial terminal	"	8;20	A. M.

Arrives final terminal

Released final terminal

(P	laintiff's Exhibit No. 2 cont	tinued)
	Mileage of trip	675
. "	Mileage roundhouse to yard,	8
1	initial terminal	1.2
	Mileage yard to roundhouse,	/
	Mileage yard to roundhouse,	10
	final terminal Allowance: 100 road miles at	1.3
		nd 3 roundhouse
	miles.	. /
No. 9-	Fireman brought on duty: Departs initial terminal	78:00 A. M.
١.	Departs initial terminal	8:20 A. M.
	Arrives mai terminal	2:40 P. M.
	Released final terminal Mileage of trip	2:50 P. M®
	Mileage of trip	75
· 14.		
A. A.	Mileage roundhouse to yard, initial terminal	1.6
	Mileage vard to roundhouse	
	final terminal	1.6
	Allowance: 100 road miles ar	nd 3 roundhouse
	• miles.	
No. 10-	-Fireman brought on duty	8:00 A. M.
	Departs initial terminal	
	Arrives final terminal	6:00 P. M.
**	Relieved final terminal Mileage of trip	6:20 P. M:
	Mileage of trip	140
	Mileage roundhouse to yard,	
	initial terminal	
	Allowance: 140 road miles ar	nd 1 roundhouse
	mile	
No. 11-	-Fireman brought on duty	8:00 A. M.
	Departs initial terminal	8:20 A. M.
	Arrives final terminal	6:00 P. M.
	Relieved final terminal	6:20 P. M
	Mileage of trips	
	Mileage yard to roundhouse,	
	final terminal	2.1
*	Allowance: 140 road miles ar	id 2" roundhouse
	miles.	

3:45 A. M. 5:40 A. M.

(Plaintiff's Exhibit No. 2 continue	d)
No. 12-Fireman brought on duty	8:00 A. M.
Departs initial terminal	8:20 A. M.
Departs initial terminal Arrives final terminal	6:00 P. M.
Released final terminal	6:20 P. M.
Mileage of trip	140.
Mileage roundhouse to yard,	1-2
initial terminal	1.2
Mileage yard to roundhouse,	•
final terminal	
Allowance: 140 road miles and 2	roundhouse
miles.	
No. 13-Fireman brought on duty	8:00 A. M:
Departs initial terminal .	8:20 A. M.
Arrives final terminal	.6:00 P. M.
Relieves final terminal	6:20 P. M.
Mileage of trip	140
Mileage roundhouse to yard,	
initial terminal	1.2
Mileage yard to roundhouse,	•
final terminal	1.3
Allowance: 140 road miles and 3	roundhouse
miles.	
No. 14—Fireman brought on duty	8:00 A. M.
Departs initial terminal	8:20 A. M.
Arrives final terminal	
Relieved final terminal	6:20 P. M.
Mileage of trip	140
Mileage roundhouse to yard,	
initial terminal	1,6
Mileage yard to roundhouse,	10
final terminal	1.6
- Allowance: 140 road miles and 3	roundhouse
miles.	
Light Engines:	
No. 15—Fireman on duty A	2:15 A. M.

Departs A Arrives B

Departs B	6:00	A. M.
Arrives A	7:50	A. M.
Arrives relieving track A	8:10	A. M.
Mileage A to B and return	40	
Mileage roundhouse to station,		
initial terminal	2.5	2
Mileage designated point to reli	ieving	
track, final terminal	2.9	4
Allowance:100 road miles and	5 términa	miles.

Note: When overtime earned does not equal in money value the equivalent of roundhouse miles, roundhouse miles will be allowed.

ARTICLE 19.

Terminals.

Sec. 1. The points shown below constitute all division or district terminals at which engine crews are usually changed, as defined by Article 2:

El Paso	Tracy	Keeler
Lordsburg	San Francisco	Gerber
Nogales	Watsonville	Dunsmuir
Tueson	Junction	Ashland
Gila	San Luis Obispò	Klamath Falls
Phoenix	San Jose	Alturas
Yuma	(Western Div.)	Wendel
Globe	Oakland	Roseburg
Indio .	Roseville	Crescent Lake
Los Angeles	Sparks *	Eugene
Santa Barbara	Imlay .	Portland
Owenyo (San	Carlin	Tillamook
Joaquin Div.)	Montello	Yaquina
Bakersfield	Ogden	Marshfield
Fresno	Mina	

Sec. 2. Should it become necessary at any time for operating or other reasons to discontinue or

(Plaintiff's Exhibit No. 2 continued) create any main line terminals, change in terminals will be considered as a proper reason for advertising such runs as are affected for seniority choice of firemen and bulletins will be posted and assignments made as provided in Article 39. Other than main line terminals will not be established or maintained for pooled or extra men unless there is enough work for two or more crews between designated points.

ARTICLE 20. Roustabout Service.

- Firemen assigned to perform switching, assembling and distributing cars, may be run in and out and through regular assigned terminals without regard for rules defining the completion of trips. Time to be computed continuously from the time required to report for duty until released at home or district terminal. Local freight rates will apply according to class of engine and district on which used. One hundred miles or less, eight hours of less, to constitute a day. Assignments will be confined to a radius of 100 miles, or if assignments should be in excess of 100 miles, overtime will be paid on basis of eight hours. Overtime shall be paid for on the minute basis at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used.
- Sec. 2. Assignments of firemen to this service will be made by bulletining vacancies or new runs

" Guenoscherg

(Plaintiff's Exhibit No. 2 continued) in accordance with rules in effect. Bulletin will designate one home terminal and time firemen will begin work.

Note: Firemen brought on duty in advance of the time specified in bulletin of assignment will be allowed a minimum of 100 miles for each time used, in addition to earnings of assignment. In each case rates and rules covering service performed will govern.

Sec. 3. Firemen required to go beyond limits of assignment will be allowed a minimum of 100 miles at the rate applying on the locomotive in the service and on the district where performed for each time so used. Time thus consumed to be excluded in computing overtime worked on regular assignment.

The above to apply to points listed below without prejudice to existing rules:

Coast Division—Santa Cruz, Salinas, Guadalupe, Lompoe.

Stockton Division-Merced, Modesto, Turlock, Lodi.

San Joaquin Division-Porterville, Oxnard.

Sacramento Division--Marysville.

Los Angeles Division—Brawley, El Centro, Calexico.

Western Division-Santa Rosa.

- 1. It is understood men will be guaranteed mile-gage of their assignments, but this does not change present basis of applying weekly guarantee.
 - 2. It is further understood passenger service,

(Plaintiff's Exhibit No. 2 continued)
helper service and work train service will not be
included in roustabout assignments.

3. Following example will illustrate what is intended by language reading—"Fireman required to go beyond limits of assignment will be allowed a minimum of 100 miles":

Fireman, assigned to perform switching at Brawley and work between that point and Niland, including West Moreland Branch, home terminal Brawley, time to begin work 7 Å M., required to make trip Niland-Indio or go beyond Niland or Brawley in any class of service will begin a new day and will be paid under the rules governing class of service performed.

It is understood this example does not imply that crews may not be assigned to work both ways out of Brawley, but in every case the limits of assignments specified in bulletin will govern.

ARTICLE 21. Temporary Terminals.

When track obstructions occur, such as snow blockades, slides, washouts, tunnel trouble, or similar conditions which make it impossible to maintain service from terminal to terminal, temporary terminals may be established by bulletin notice, specifying the points to be established as temporary terminals runs and services affected, time effective to be

at 12:01 A. M. of date following date of bulletin. If conditions are remedied and line opened within forty-eight hours from time bulletin becomes effective, bulletin will be considered void and firemen compensated same as if bulletin had not been issued. When temporary terminals are thus created, it is understood that agreement provisions applying to terminals shall apply at the temporary terminals.

ARTICLE 22. Sixteen-Hour Tie-Up.

When firemen en route are used in work-train or snow-plow service on account of floods, washouts, snow storms, slides or other unusual conditions, or firemen en route are delayed by such conditions, time to be computed as follows:

Continuous time, less time fied up under the law, will be allowed for first 24 hours, computed from time required to report for duty. For first 16 hours of each subsequent 24-hour period delayed firemen will be allowed 200 miles. Should miles run exceed 200, or hours on duty exceed 16 in any 24-hour period, actual miles or hours will be allowed. If trip is resumed during first 16 hours of any 24-hour period held, time will be computed continuously from end of previous 24-hour period, provided, that if overtime accrues on the trip, that portion of the overtime due to starting pay at the expiration of any 24-hour period shall be paid for at the pro rata rate in order that time and one-half for overtime

will not be so applied as to increase the rates paid for the time computed continuously from end of previous 24-hour period.

It is understood under this rule that the first 200 miles allowed on each 24-hour period will apply on the guarantee provided in Article 36.

ARTICLE 23.

Helper Service—Rates of Pay and Working Conditions.

Firemen assigned to helper service exclusively will be allowed through freight fates as per class of locomotive and district as tabulated in Sections 2, 3, 4, 5, 6 and 7, respectively, of Article 13. One hundred miles will be allowed for the first eight consecutive hours, or less. If used on trip which departs from home or district terminal after the expiration of eight hours from time required to report for duty on initial call for service, firemen will begin a new helper day of eight consecutive hours, or less. On runs of 100 miles or less, overtime will begin at the expiration of eight hours; on runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by 1214; Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate. When miles exceed hours, miles will be allowed.

Example 1: Crew called for certain time and after coming on duty and without being released time of departure is set back say two hours.

Answer: Time of trip should be computed from time reported for duty on first call.

Example 2: Assigned helper crew on duty, home terminal of helper assignment, 12:50 P. M.; performs helper service, arriving at district terminal 7:25 P. M.; later called to deadhead from district terminal to home terminal of helper assignment, departing district terminal deadhead 9:00 P. M. How should they be compensated?

Answer: Deadhead movement from district terminal starting after expiration of eight-hour helper day should be paid for under Article 31, Section 1, Firemen's Agreement, applying to deadhead service; however, if deadhead had begun before expiration of eight-hour period, same would have been paid as part of first eight-hour helper day under combination rule, Article 12, Section 1.

Example 3: Assigned helper fireman performs helper service and on returning to helper terminal tied up for rest prior to expiration of eight-hour helper day. How should he be compensated?

Answer: If such fireman is not needed for further service before expiration of eight-hour helper day, should be allowed a minimum day; however, if required for further service before expiration of first eight-hour helper day, and not available, account marking rest, should be paid only for actual time worked, miles or hours, whichever greater.

Question 35, Interpretation No. 1, Supplement No. 24:

Where crews are assigned exclusively to helping passenger trains and have been paid at passenger rates of pay, are freight rates to be paid under this Section?

Decision: Yes.

Section 2. Firemen assigned to helper service exclusively shall be called first-in first-out for initial service on each eight-hour helper day.

Sec. 3. Other firemen will not be called for helper service when firemen assigned to helper srvice exclusively are available.

Sec. 4. When a fireman assigned to helper service exclusively is off for any cause, the fireman standing first-out on the extra board, at the time call is made, shall be assigned and permitted to hold the vacancy for ten days unless relieved by regular fireman returning. After the expiration of ten days the older firemen on the seniority list, in their order of seniority, applying for the position, shall have preference for the run until the regular fireman returns. When fireman is assigned by bulletin to help passenger trains only, the vacancy will be filled in accordance with Section 8, Article 37. In all cases conditions and rates of pay of firemen assigned to helper service exclusively to apply.

Note: On seniority districts where special rule is agreed to between Local Committee of the Firemen and the Local Officials of the Company requiring firemen to remain on helper positions for a stipu-

(Plaintiff's Exhibit No. 2 continued) lated period before being permitted to vacate same, special rules shall govern.

Sec. 5. Bulletins advertising vacancies in helper service, or the establishment of new stations at which firemen are to be assigned to helper service exclusively, shall designate the station at which they are to be assigned for service, and said station shall be known as their home station. Firemen assigned thereunder shall be paid continuous time from the time they are required to report for duty at their home station until returned thereto, unless tied up and relieved under the Hours of Service Law, or tied up and relieved at regular district terminals.

Sec. 6. Firemen assigned to helper service exclusively shall be allowed a minimum of 100 miles, at highest rate applicable to any engine used during last helper day, for each calendar day on which no service was begun. Firemen booking rest on any date on which no service was begun, and such rest covers a period beyond 10:30 P. M., this Section shall not apply.

Example: Engine crew called off extra board and deadheaded 8:30 A. M. to home terminal of helper assignment to fill a vacancy in helper service during life of bullefin. Arrived helper-terminal 11:30 A. M. and placed on helper board. Performed no service that date. How should crew be compensated 4

Answer: Should be paid for the deadhead selvice as per Article 31. If this compensation does not

(Plaintiff's Exhibit No. 2 continued) equal minimum of 100 miles, as specified in Article 23, Section 6, the difference should be made up.

Sec. 7: Firemen assigned to helper service exclusively and used for any service other than assignment will be paid not less than 100 miles for each time so used, according to the rates and rules governing such service. Actual time in other service to be excluded in computing overtime in assigned service.

Explanatory: Under this paragraph, if a helper fireman is required to couple in and assist trains on account of road engines being disabled, such work will be included in his regular helper assignment. If an engine is broken down and has to be cut out of train, or in case trains tie up under law, assigned helper firemen used to handle such trains will be considered outside of regular helper work and a minimum of 100 miles will be allowed for such service.

Sec. 8. Assigned helper firemen who, through no fault of their own, are not called in regular turn, shall be allowed 50 miles at the rate applying on the locomotive on which they should have been used, and will stand first out. This not to apply if fireman is not available under the Hours of Service Law.

Example 1: Firemen assigned to helper service called at their helper terminal in their order, first-in first-out, for initial service on each eight-hour helper day, as follows:

(Plain	itiff's	Exhibit No. 3	2 continued)		•
Fireman	"A"		9:00	A.	M.
Fireman	"B"	•	10:30	A.	M.
.Fireman	"C"	*	1:10	P.	M

All three firemen make trips in helper service and return to helper terminal. Call is placed for helper fireman for 4:10 P. M., and Fireman "C" is used. Is Fireman "A" entitled to runaround account not being used on the 4:10 P. M. trip?

Decision: No, these firemen were called in turn for initial service on their eight-hour helper day, which had not expired.

Example 2: Firemen assigned to helper service called at helper terminal in their order, first-in first-out, for initial service on each eight-hour helper day, time of arrival as follows:

Fireman "A"—6:45 A. M.—on duty 1 hour 30 minutes.

Fireman "B"—7:05 A. M.—on duty 8 hours 20 minutes.

Call is placed for helper fireman for 11:15 P. M. and Fireman "B" is used. Is Fireman "A" entitled to runaround on account not being used on 11:15 P. M. trip?

Decision: Yes. These firemen were not called first-in first-out for initial service on each eight-hour helper day and, as call for 11:15 P. M. constituted initial service on an eight-hour helper day for both of these firemen, the fireman who had been

(Plaintiff's Exhibit No. 2 continued) released first from previous service (Fireman "A") should have been used.

Sec. 9. Firemen assigned to helper service will be compensated for actual time consumed in initial or terminal switching, per Article 17. This does not apply where helper handles cars in cutting helper engine in or out of train, as this is a part of helper service.

It is further understood that helper firemen will not be used in switching service when road firemen are available.

Sec. 10. A fireman assigned to helper service exclusively, reporting for work after lay-off, will, upon reporting, be placed in the position on the board the man representing him holds, and the man representing him will be returned to the list from which taken. If the man representing the man who laid off is working on and has not completed an eighthour helper day, the man who laid off and is reporting for work will take the position his representative holds at the completion of said eight-hour helper day, the representative being returned to the list from which taken.

Question: Regular helper fireman lays off: vacancy filled by extra man. On date regular fireman reports for work no service performed. Would regular fireman or extra fireman receive dead day?

Decision: Regular man when he reports not later than 10:30 P. M.; extra man when regular man reports later than 10:30 P. M.

Question: Fireman assigned to helper service, terminal outside point, with no extra list, lays off. Extra fireman sent out to fill vacancy. Regular man returns and in couple days another regular fireman lays off. Is it permissible to hold this same extra fireman to fill the next vacancy?

Decision: Yes, compensating him under Article. 35.

ARTICLE 24. Logging Service.

- Sec. 1. Firemen assigned to logging service exclusively will be paid freight rates according to class of locomotive and district on which used; 100 miles or less, eight hours or less, to constitute a day; over 100 miles, pro rata; on runs of 100 miles or less, overtime will begin at the expiration of eight hours; on runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by 12½. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate. Time to be computed continuously from the time required to report for duty until released at home or district terminal.
 - Sec. 2. Assignments of firemen to Logging Service exclusively will be made by bulletining vacancies or new runs in accordance with rules in effect, Firemen to be assigned to one home terminal and may be run in and out of said home terminal during a day's work in Logging Service, without regard for rules defining the completion of trips.

- Sec. 3. Firemen assigned to Logging Service exclusively and used in other service will be allowed a minimum of 100 miles at the rate applying on the locomotive in the service and on the district where performed for each time so used. Time thus, consumed to be excluded in computing overtime in Logging Service. Rules defining the completion of trip to govern for all service performed outside of the Logging Service assignments.
- Sec. 4. Firemen assigned to Logging Service exclusively will be allowed 100 miles at the rate applying on the locomotive on which last used, for each calendar day of assignment on which no service is begun.

ARTICLE 25.

Snow-Plow and Flanging Service.

Firemen assigned to, or firemen sent out for and a used in snow-plow or flanging service, shall be allowed through freight rates as per class of locomotive and district as tabulated in Sections 2, 3, 4, 5, 6 and 7 of Article 13. One hundred miles to be allowed for the first eight consecutive hours or less. If used on trip which departs from terminal or tie-up point after eight hours from the time required to report for duty, fireman shall begin a new snow-plow or flanging service day of eight consecutive hours, or less. On runs of 100 miles or less, overtime will begin at the expiration of eight-hours; on runs of over 100 miles, overtime will begin when the

(Plaintiff's Exhibit No. 2 continued) time on duty exceeds the miles run divided by 12½. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate. When miles exceed hours, miles will be allowed.

ARTICLE 26.

Work Trains-Working Conditions.

- Sec. 1. Firemen in work-train service shall be run to a place where sleeping and eating accommodations can be secured, except where the company furnishes such accommodations.
- Sec. 2. Firemen held for work-train service shall be allowed 100 miles at the minimum freight rate of for each calendar working day on which no service is begun; also on Sundays, except when at district terminals or at bulletined tie-up points.
- Sec. 3. The bulletined tie-up point of firemen assigned to work-train service will not be changed unless the work has progressed sufficiently to warrant a change, and such new bulletined tie-up point must be in excess of 25 miles from former bulletined tie-up point.

It is understood that where the bulletined tie-up point is changed as above and the service required of the fireman is similar to that bid in by him, it will not be considered a new run, and will not be bulletined for seniority choice of firemen, and he will accept the provisions of Section 2, this Article, at such bulletined tie-up point. Bulletins changing tie-up points will read as follows:

(Plaint	iff's Exhib	it No. 2 cor	itinued).	
"Effective S				
for work train				
instead of	1,	**	, , ,	

- Sec. 4. Firemen leaving terminals in road service and used in work-train service en route are not subject to work train rules. They will conform to provisions of Article 22 when conditions specified in Article 22 obtain.
- Sec. 5. In construction of new lines forming a part of the Southern Pacific Company's lines, Pacific Lines, firemen on the seniority district of that part of a line where the new line diverges, will be given the right to bid for service in the Construction Department under seniority rules governing. If no application is received the youngest man on the working list of that district will be assigned. The men assigned to such service will be compensated as to rates of pay and hours of service in accordance with agreement provisions. The working rules and conditions of the Construction Department will obtain.
- Sec. 6. When unassigned work trains are tied up at outside points where extra lists are maintained, they should be manned from such extra lists. However, when extra men in unassigned work train service are tied up at outside points where an extra list is maintained, they should remain in that service unless it is known that work train will be tied up thereafter only at that point, in which case crew

(Plaintiff's Exhibit No. 2 continued) from other extra list will be released and service manned from the extra list where crew ties up.

- Sec. 7. When fireman is deadheaded to tie-up point of work train to fill vacancy on same, and/or on completion of day's work deadheaded from tie-up point of work train to terminal, he will be allowed deadhead mileage in accordance with Article 31, in addition to time allowed in work train service.
- See. 8. A fireman laying off and reporting for duty will on his request be advised where work train is to tie up on completion of day's work, and will be permitted to assume duty at such tie-up point, provided the tie-up point can be determined sufficiently in advance.
- Sec. 9. Firemen performing the following service will be paid miles or hours, whichever is the greater, for such service in addition to their work train day:
 - 1. Engine crew handles light engine or engine and caboosé from district terminal to outside point, goes into work train service, or engine crew handles light engine or engine and caboose from outside point to district terminal on discontinuance of work train.
 - 2. Engine crew on completion of work train day handles light engine or engine and caboose from outside point to district terminal or other point for fuel, water, repairs, or other necessary attention to engine.
 - 3. Engine crew handles light engine or en-

(Plaintiff's Exhibit No. 2 continued) gine and caboose from district terminal or other point after having been fueled, watered, repaired, or received other necessary attention to engine, or handles an engine to take the place of work train engine to point where work train service begins.

- 4. When work train fireman performs any service out of terminal after being released at terminal or work train tie-up point, he shall begin a new day; time and mileage for subsequent service to be computed independently in accordance with the rules for class of service performed.
- Sec. 10. (a) A qualified locomotive fireman will be used with self-propelled locomotive cranes, self-propelled ditchers, self-propelled pile drivers, self-propelled rail loaders, self-propelled wrecking derricks, and self-propelled steam shovels, operating in toad or yard service, when such equipment is of a type-that requires the use of a fireman, in connection with which it is agreed that the following will govern:
- (b) Agreement covers such "self-propelled" equipment as has sufficient power to draw or propel itself and one or more standard cars, that operates on track rails.

Road Territory:

(c) Except as provided in Paragraph (e), self-propelled equipment, of the kinds and under the

(Plaintiff's Exhibit No. 2 continued) conditions enumerated in Paragraph (a), when moving under its own power, will be manned by a locomotive fireman regardless of distance traveled; except, when handling attendant car only, locomotive fireman need not be used when distance traversed does not exceed one-half (½) mile from siding or spur to place of work; locomotive firemen will be compensated under work train rates and rules of the district, Articles 13 and 26, Firemen's Agreement.

(d) On the Great Salt Lake trestle road crews will be used to load or unload material. Self-propelled equipment with attendant car only may move from first siding or spur to point of work, or vice versa, without crew complement as provided in Paragraph (c):

In Yards and at General Stores:

- (e) Self-propelled work equipment, of the kinds enumerated in Paragraph (a), will not be used to switch cars, place loads, or remove empties unless manned by a locomotive fireman; this, however, not to be construed as prohibiting the use of such self-propelled equipment, without a locomotive fireman, in the shunting of cars or empties along tracks where they are being loaded or unloaded of material and supplies on material or shop yard tracks.
- (f) Qualified men entitled to service under the provisions of this agreement and not used will be paid not less than they would have earned had they been called for the service.

ARTICLE 27.

Fire Train Service, Sacramento Division.

- Sec. 1. Fireman assigned to fire train service shall be paid through freight rate per day provided in Article 13, Section 6.
- Sec. 2. Working hours will be from 6:00 A. M. to 2:00 P. M. The fireman watching the engine from 6:00 A. M. to 12:00 Noon, and the engineer from 12:00 Noon to 6:00 P. M., without regard to compensation defined in Section 4.
- Sec. 3. Overtime to be computed on the minute basis and paid for at three-sixteenths of the daily rate.
- Sec. 4. Service other than fire train service performed between the east and west mile board of the station, designated in bulletin of assignment as the home terminal of the fire train crew, will be computed separately on the minute basis, with a minimum of one hour, and paid for at one-eighth of the daily rate; such allowance to be made in addition to compensation provided for fire train service.
- Sec. 5. When used beyond the mile boards, in other than fire train service, firemen will be compensated for the service performed at the rate and under the rules governing. Such allowance to be made in addition to compensation provided for fire train service.
- Sec. 6. Firemen in fire train service used in flanger service will be paid for same in addition to compensation for fire train service.

Sec. 7. Firemen in fire train service called for such service before 6:00 A. M. or after 2:00 P. M. will be paid therefor on overtime basis as provided for in Section 3, this Article.

Sec. 8. A fireman assigned to fire train service and required to watch his engine between the hours of 2:00 P. M. and 6:00 Λ . M. shall be paid for the time consumed on the minute basis, at one-eighth of the daily rate, with a minimum of one hour, same to be allowed in addition to compensation for fire train service.

Sec. 9. Firemen assigned to fire train service will be granted two days off per month with pay, provided that a full month's service has been rendered in the preceding month; for example: If fireman works the full month of June he will be given two days off in July with pay.

Sec. 10. Firemen assigned to fire train service who are required to perform work train service or make movements from fire train terminal to another point and return for purpose of securing water, fuel or other supplies used for commercial purposes or for use of contractors, or to replenish supplies used by such contractors, will be considered as performing service not a part of fire train assignment, and a minimum of 100 miles will be allowed. This will not set aside or modify provisions of Section 4, or Definition No. 2, this Article.

Firemen assigned to fire train service, who run their engines to some point for purpose or having

engines given necessary attention and return with same engines or other engines for fire train use, will be considered as performing fire train service and compensated accordingly.

Firemen assigned to fire train service who are required to make movement to some point to replenish oil, water, or other necessary supplies, except as provided by Paragraph 1, will be considered as performing fire train service and compensated accordingly.

Firemen who handle fire train engine, or engine with fire train equipment and/or caboose from fire train terminal to district terminal on discontinuance of fire train service, or from district terminal to fire train terminal on inauguration of fire train service, will be paid miles or hours, whichever is the greater, for such movements, in addition to fire train day, provided, however, if such movement is started before or after fire train working hours, a minimum of 100 miles will be allowed.

Definition of fire train service:

- 1. Going to and returning from fire.
- 2. Time consumed at fire.

Note: In connection with definition No. 2, it is understood whatever duties have been performed in the past at fire and paid for as fire train service will govern in the future.

- 3. Sprinkling sheds. —
- 4. Supplying quarters used by fire train crews with water.

- 5. Supplying section quarters at Andover, Tamarack and Spruce with water.
- 6. Supplying locomotives with water when engines run short of water account of mechanical defects, derailments, wrecks, track obstructions, defects or shortage in station supply tanks occurring after crews depart from terminal.

ARTICLE 28.

Switch Engine Service.

Sec. 1. The minimum rate of wages per day shall be:

Weight on Drivers		Firêmen 4	Helpers
Less than 140,000 ll	os	\$6.07	\$6.07
140,000 to 200,000 li)S	6.19	6.07
200,000 to 300,00 II)s	6.31	6.07
300,000 lbs. and ove			6.23
Mallet Type:			
Less than 275,000 H	08	7.19	
275,000 lbs. and ove	r	7.43	

- Sec. 2. Eight hours or less shall constitute a day's work. Time to begin when required to report for duty and to end at time engine is placed on designated track or fireman is released. Where firemen are required to register on and off duty, the time required to perform such service shall be construed to mean time on duty.
 - Sec. 3. Except when changing off where it is the practice to work alternately days and nights for certain periods, working through two shifts to change off; or where exercising seniority rights.

from one assignment to another; or when extra men are required by schedule rules to be used, all time worked in excess of eight hours continuous service in a twenty-four hour period shall be paid for as overtime, on the minute basis, at one and one-half times the hourly rate, according to class of engine.

Should fireman be held on duty account failure of relief fireman to report at time specified, he will be paid on basis of time and one-half overtime until relieved from duty.

If fireman is held on duty beyond regular hours of assignment account of company not furnishing relief, he will be paid a minimum of eight hours at time and one-half.

Examples: What compensation should be allowed for additional service when a fireman is regularly assigned to work 12 midnight to 8:00 A. M., and Company fails to furnish relief?

(a) Is required to cover the third shift on the same day—4:00 P. M. to 12 midnight?

Answer: (a) Eight hours at time and one-half.

(b) Is required in an emergency to work 8:30 A. M. until 11:30 A. M.?

Answer: (b) Eight hours at time and one half.

(c) Is required in an emergency to work 8:00 P. M. until 12 midnight (four hours) on the same day?

Answer: (c) Eight hours at time and one-half.

Note: Extra fireman sent to point where extralist is not maintained to relieve man holding regular(Plaintiff's Exhibit No. 2 continued) assignment in yard service and during period relieving regular assigned man is used on second shift within a twenty-four hour period, will be allowed time and one-half for service on the second shift.

Question 90, Interpretation No. 1, Supplement No. 24:

What compensation should be allowed for additional service where a crew is regularly assigned to work 12 midnight to 8:00 A. M., and (service performed not affected by exceptions outlined in this rule):

(d) Is given 48 hours notice and assignment is moved up an hour, starting at 11:00 P. M., and being relieved at 7 A. M., and consequently in the 24-hour period works 9 hours, but not more than 8 hours on a shift?

Decision: (d) On account of complying with the 48-hour provision, which makes it permissible to change beginning time, crews only entitled to a minimum day.

Question 91, Interpretation No. 1, Supplement No. 24:

An extra man is worked on two 8-hour shifts within the same 24-hour period, or on one 8-hour shift and is started on another shift in the same 24-hour period that spreads into the next 24-hour period. How shall he be paid for such service?

Decision: It should be understood that under that portion of Section 3 applying to extra men

when required to remain on duty in excess of eight hours in continuous service they will receive overtime at time and one-half on the minute basis. When they start a second trick within a 24-hour period, they will not be paid under the overtime rule, but will start a new day regardless of present rules and will receive for eight hours or less straight time rates. The intent of this is not to deprive extra men of extra work, which would result if time and one-half had to be paid for the second shift.

Note: The above (Question 91 and Decision thereto) not to conflict with ruling January 13, 1928, file E&F 125-89, allowing extra fireman time and one-half on second shift when relieving men holding regular assignment at point where extra list not maintained, and used on a second shift within a twenty-four hour period.

Question 92, Interpretation No. 1, Supplement No. 24:

What compensation should be allowed an extra man who is called and at 4 A. M. relieves a regular man who is covering an assignment, 12 midnight to 8:00 A. M., and the assignment works until 9 A. M.?

Regular fireman working 4 hours,

Extra fireman working 5 hours,

Remainder of crew working 9 hours.

Decision: Extra man will receive a minimum day only.

Question 94, Interpretation No. 1, Supplement No. 24:

If a yard crew was assigned for 10 hours and for some reason was relieved at the expiration of 8 hours, what number of hours is to be allowed?

Decision: A minimum of 8 hours. Assignments should be for 8 hours and time worked in excess thereof should be paid as overtime.

- Sec. 4. Firemen and helpers shall be assigned for a fixed period of time which shall be for the same hours daily for all regular members of the crew. So far as is practicable, assignments shall be restricted to eight hours' work.
- Sec. 5. Regularly assigned yard firemen and helpers will each have a fixed starting time and their starting time will not be changed without at least 48 hours' advance notice, except as provided in Section 12, this Article.
- Sec. 6. When three eight-hour shifts are worked in continuous service the time for the first shift to begin work will be between 6:30 A. M. and 8:00 A. M., the second between 2:30 P. M. and 4:00 P. M., and the third 10:30 P. M. and 12:00 midnight.
- Sec. 7. Where two shifts are worked in continuous service, the first shift may be started during any of the periods named in Section 6.
- Sec. 8. Where two shifts are worked not in continuous service, the time for the first shift to begin work will be between the hours of 6:30 A. M. and 10:00 A. M., and the second not later than 10:30. P. M.
 - Sec. 9. At points where only one yard crew is

(Plaintiff's Exhibit No. 2 continued) regularly employed, or an independent assignment is worked, they can be started at any time subject to Section 5.

Question 95, Interpretation No. 1, Supplement No. 24:

Should it be understood that this Section applies only to regular assignments, with no change in present practice for starting extra yard crews?

Decision: Yes.

Sec. 10. The time for fixing the beginning of assignment or meal period is to be calculated from the time fixed for the crew to begin work as a unit without regard to preparatory or individual duties.

Sec. 11. A designated point will be established for firemen and helpers coming on and going off duty, and before such points are changed 48 hours' advance notice will be given. Extra firemen will be notified when called the point at which required to report for duty.

The point for going on and off duty will be governed by local conditions. It is not considered that the place to report will be confined to any definite number of feet, but the designation will indicate a definite and recognized location.

Sec. 12. All new or vacant assignments, or when the starting time of any assignment is changed three hours or more, shall be bulletined for seniority choice of firemen or helpers in accordance with Article 39. Bulletin to show time and place required to report for duty.

Sec. 13. Yard firemen and helpers will be allowed twenty minutes for lunch between four and one-half and six hours after starting work without deduction in pay. Yard firemen and helpers will not be required to work longer than six hours without being allowed twenty minutes for lunch, with no deduction in pay or time therefor.

Question 104, Interpretation No. 1 to Supplement No. 15, General Order No. 27:

Where yard firemen are required by schedule to watch engines during the meal period are such rules maintained, and if so, should this be paid for at time and one-half or at pro rata rates as individual service?

Answer: Enginemen and firemen are not relieved of care of engines during lunch period; therefore, rule is eliminated.

- Sec. 14. Where regularly assigned to perform service within switching limits, yard firemen or helpers shall not be used in road service when road crews are available, except in case of emergency. When used in road service under conditions just referred to, they shall be paid miles or hours, whichever is the greater, with a minimum of one hour, for the class of service performed, in addition to the regular yard pay and without any deduction therefrom for the time consumed in said service.
- (1) Location of yard limit boards established as of December 20, 1933, will define switching limits.
 - (2) Should the management desire to extend

(Plaintiff's Exhibit No. 2 continued) switching limits, conference will be held between local officials and local committee, B. L. F. & E.; failing to reach agreement, matter will be referred to General Chairman and General Manager, or his representative, and failing to reach settlement, case will be handled in usual manner.

- (3) Firemen in yard service, who are required to go beyond the location of the yard limit boards as they stood January 1, 1926; but not beyond location of the yard limit boards as of December 20, 1933, will be paid 40 cents for each tour of duty they are required to perform work described, in addition to the tabulated yard rates and overtime earned. This will include firemen, yard service, Tracy, performing service at Banta.
- (4) Firemen in yard service at Sparks, who are required to go to Reno, within Sparks yard limits, will be paid 40 cents for each tour of duty, in addition to the tabulated yard rates and overtime earned.
 - (5) Firemen in yard service at Roseville, who are required to make trip Roseville to Rocklin, will be compensated as set forth in Paragraph (3):
 - (6) Extension of Fresno train yard will not be included in this Agreement, except that during period the new unit of the Fresno yard is closed, firemen in yard service operating between the old and new yard will be compensated as set forth in Paragraph (3).

- (7) Locations where yard limit boards stood January 1, 1926, will be definitely determined and designated by an appropriate signboard or stake.
- (8) Switching limits may be contracted and should such contraction eliminate the extension subsequent to January 1, 1926, yard rates will apply.
- (9) Nothing in this Agreement will restrict the extension of sidings or other tracks to properly serve present industries or to give better protection to trains entering yards; neither will it restrict the extension or enlargement of train yards.

Question 18 to Interpretation No. 2 to Supplement No. 24 to General Order No. 27:

Prior to the supplement, rules or practices were in effect which provided that when yard crews regularly assigned within yard or switching limits were used outside of such limits they would be paid the highest rate for the entire day. How is such rule or practice affected by Article XX (b)?

Decision: Superseded by Article XX (b).

Question 19 to Interpretation No. 2 to Supplement No. 24 to General Order No. 27:

Where certain crews are regularly assigned to perform work both inside and outside of yard or switching limits and on these runs the conductor, engineer and fireman are paid road rates and the brakeman yard rates, is such arrangement affected by Article XX (b)?

Decision: Not affected.

(Plaintiff's Exhibit No. 2 continued)

Question 20 to Interpretation No. 2 to Supplement No. 24 to General Order No. 27:

Does the term "minimum of 1 hour" mean that time of two short trips in road service is cumulative, or does it mean that minimum payment for each time used in road service is 1 hour?

Decision: Minimum of 1 hour for each time used in road service.

Question 21 to Interpretation No. 2 to Supplement No. 24 to General Order No. 27:

How does Article XX (b) apply in following examples:

- (a) Work 5 hours in yard, then used in road service 4 hours, making 20 miles; total spread, 9 hours?
- (b) Work 3 hours in yard, then used in road service 2 hours, making 10 miles; returning to yard for 4 hours; total spread, 9 hours?
- (c) Work 7 hours in yard, then used in road service 3 hours, making 18 miles; total spread, 10 hours?
- (d) Work 2 hours in yard, used in road service 30 minutes, making 5 miles; returns to yard and works 2 hours; again used in road service for 18 hour, making 10 miles; then returns to yard and works 2 hours and 30 minutes; total spread, 8 hours?
- (e) Work I hour in yard, used in road service for I hour, making 20 miles; returns to yard and works 5 hours; again used in road service for 2 hours, making 15 miles; total spread, 9 hours?

- (f) Assigned from 7 A. M. to 3 P. M.; work 2 hours in yard; used in road service for 1 hour, making 10 miles; returns to yard and works 4 hours; again used in road service for 5 hours, making 25 miles; relieved at 7 P. M.; total spread, 12 hours?
- (g) Assigned from 7 A. M. to 3 P. M.; work 1 hour in yard; used in road service 9 hours, making 30 miles; relieved at 5 P. M.; total spread, 10 hours?

Decision: Under Article XX (b) yard engine crews regularly assigned to perform service within switching limits would be paid:

- (a) Eight hours at straight yard rates, 1 hour at yard overtime rates (time and one-half), and 4 hours at pro rata road rates.
- (b) Eight hours at straight yard rates, 1 hour at yard overtime rates (time and one-half), and 2 hours at pro rata road rates.
- (c) Eight hours at straight yard rates, 2 hours at yard overtime rates, (time and one-half), and 3 hours at pro-rata road rates.
- (d) Eight hours at straight yard rates, 1 hour at pro-rata road rates for first road service, and 1 hour at pro-rata road rates for second road service.
- (c) Eight hours at straight yard rates, 1 hour at yard overtime rates (time and one-half), 20 miles at pro rata road rates for first road service, and 2 hours at pro rata road rates for second road service.
- (f) Eight hours at straight yard rates, 4 hours at yard overtime rates (time and one-half), and 6 hours at pro rata road rates.

(g) Eight hours at straight yard rates, 2 hours at yard overtime rates (time and one-half), and 9 hours at pro rata road rates.

Question 22 to Interpretation No. 2 to Supplement No. 24 to General Order No. 27:

If yard crews who are regularly assigned to perform service within switching limits are used in road service when road crews are available, how shall they be paid?

Decision: Except in cases of emergency, yard crews should not be used in road service when road crews are available, but whenever used in road service, yard crews should be paid for the service under provisions of Article XX (b).

Question 23 to Interpretation No. 2 to Supplement No. 24 to General Order No. 27 s

Article-XX (b) reads in part: "Where regularly assigned to perform service within switching limits," etc. What is meaning of "regularly assigned?"

Decision: Engine crews who may properly be called and used in service within switching limits for which yard rates are paid shall be considered as "regularly assigned" under application of this rule.

Question 24 to Interpretation No. 2 to Supplement No. 24 to General Order No. 27:

What is the Intent of the words "road service" as used in this Section?

Decision: Any service for which road rates are paid.

Sec. 15. When firemen or helpers who are assigned to regular runs, extra passenger lists or pooled service are used in yard service they shall be paid full freight rates, when freight rates are higher than yard rates. This includes extra firemen or helpers when in pool freight service or filling the place of regular road firemen or helpers.

Sec. 16. Switch engine positions that have been bulletined and cease to work at least six days per week shall be discontinued.

Sec. 17. Where two or more locomotives of different weights on drivers are used during a day's work, the highest rate applicable to any locomotive used will be paid for the entire day.

Sec. 18. A fireman or promoted fireman returned to firing service, under Article 43, Section 1, bidding for and accepting assignment to the position of permanent switch engineer, thereby forfeits all seniority rights as a fireman.

Sec. 19. When a regularly assigned yard fireman is used to perform/maintenance of way work within yard limits, such fireman will be compensated for the entire day's work at regular yard rates.

In cases where an extra crew is called and used to perform a combination of yard service and maintenance of way work within yard limits, work train rates will apply for the day's service, when such rates are higher than yard rates.

Sec. 20. Yard assignments will not be canceled unless it is known in advance that same will be

(Plaintiff's Exhibit No. 2 continued) discontinued for a period of three calendar days or more.

Where assignments are thus canceled, firemen relinquish rights thereto and will be privileged to make displacements under rules in effect. Yard assignments canceled under these conditions and later restored, will be bulletined for seniority choice under rules governing.

Firemen regularly assigned to shift in yard service, who are ready for service and do not lay off of their own accord, will be guaranteed not less than six days per week. If firemen, assigned seven days per week in yard service, do not work the following holidays (or the day preceding or following such holidays), New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, the day not worked shall be deducted. In computing weekly guarantee, the week will begin on Monday on sevenday assignments, and on day following regular layover day on six-day assignments.

In making up guarantee, time so allowed will be paid at rate applying on the locomotive on which last used.

In cases where an extra fireman is sent to an outyide point, where extra list is not maintained, to fill vacancy on regular assignment in yard service, guarantee will apply to such extra fireman during period he is filling such vacancy. However, at points where extra list is maintained and vacancy is being filled (Plaintiff's Exhibit No. 2 continued) from such extra list, as per Section 3, Article 37, Firemen's Agreement, holiday or other day not worked during period extra man filling vacancy would not be paid.

Examples...

Example 1: Regular assigned fireman, six day assignment, lays off Monday, Tuesday and Wednesday. Thursday, July 4, holiday, assignment not worked. Reports 4th and works Friday and Saturday. Under this example will not be paid for 4th.

Example 2: Regular assigned fireman, six day assignment, lays off Saturday, Monday, holiday, assignment not worked. Reports for work Monday and works Tuesday to Saturday inclusive. Would not receive pay for holiday.

Example 3: Regular assigned fireman, six day assignment, works Monday. For some reason assignment does not work Tuesday (not a holiday). Works Wednesday, Thursday and Friday, and works two shifts on Saturday, or some other previous day in that week. Extra day made doubling will be used to offset day lost.

Example 4: Regular assigned fireman, six day assignment, works Monday. No service performed Tuesday, assignment not worked. Displaced Wednesday, Will receive one day for Tuesday. However, it regular man doubled Monday or man relieving him should double during balance of week, man

(Plaintiff's Exhibit No. 2 continued) . displaced will not receive pay for day he did not work.

Example 5: Regular assigned fireman works Saturday, layover Sunday. For some reason assignment does not work Monday. Displaced Tuesday by senior man. Will receive pay for Monday. However, if man making displacement should double during balance of week, extra day made in such double will offset day lost by man displaced.

Example 6: Regular assigned fireman, seven-day assignment, works Monday, Tuesday and Wednesday. For some reason assignment does not work Thursday (not a holiday). Works Friday, Saturday and Sunday. Will receive pay for Thursday. However, if such assigned man should double on any day during that week, he would not be paid for day lost Thursday.

Example 7: Regular assigned fireman, seven day assignment, works Monday, Tuesday, July 4th, a holiday, assignment does not work. Lays off Wednesday. Reports and works Thursday, Friday and Saturday. For some reason assignment not worked Sunday. Will receive pay for Sunday, or a total of five days for the week. However, if assigned man should double on any of the days worked during that week, he would not be paid for Sunday.

(Plaintiff's Exhibit No. 2 continued) ARTICLE 29.

Hostlers and Hostler Helpers Rates of Pay

and Working Conditions.

- Sec. 1. Hostlers handling engines between passenger stations and roundhouses or vards or on main tracks shall be classed as "outside hostlers" and shall be paid a minimum of \$6.71 per day of eight consecutive hours or less. On dates outside hostlers handle engines otherwise than between passenger stations and roundhouses or yards or on main tracks the \$6.71 rate will apply.
- Sec. 2. Hostlers who do not make movements as described in Section 1 shall be classed as "inside hostlers" and shall be paid a minimum of \$6.07 per day of eight consecutive hours, or less.
- Sec. 3. Helpers assisting outside hostlers shall be paid a minimum of \$5.51 per day of eight consecutive hours, or less.
- Sec. 4. Except when changing off, where it is the practice to work alternately days and nights for certain periods, working through two shifts to change off; or when exercising seniority rights from one assignment to another; or when extra men are required by schedule rules to be used; all time worked in excess of eight hours continuous service in a twenty-four hour period shall be paid for as overtime on the minute basis at one and one-half times the hourly rate.

Should hostler be held on duty account failure of relief hostler to report at time specified, he will

be paid on basis of time and one-half overtime until relieved from duty.

If hostler is held on duty beyond regular hours of assignment account of Company not furnishing relief, he will be paid a minimum of eight hours at time and one-half.

- Sec. 5. Where three eight-hour shifts are worked in continuous service, the time for the first shift to begin work will be between 6:30 A. M. and 8:00 A. M. the second, 2:30 P. M. and 4:30 P. M., and the third, 10:30 P. M. and 12:00 midnight.
- Sec. 6. New and vacant positions in hostling service shall be bulletined for seniority choice of firemen and hostlers as soon as created or become vacant and the senior qualified fireman or hostler making application will be assigned thereto. Should there be no applications received, the junior qualified extra fireman will be assigned:
- Sec. 7. When the rate of pay for "outside hostlers" equals the rate of pay for switch engineers, such positions shall be bulletined for seniority choice of road engineers as fast as vacancies occur.
- Sec. 8. New or vacant positions as hostler helpers shall be bulletined for seniority choice of hostler helpers.

Hostler helpers prior to accepting employment as such will be required to familiarize themselves (without expense to the Company) with the duties of hostler helpers by accompanying regular hostler

during his tour of duty a sufficient period to satisfy the applicant and hostler that he is qualified to perform the necessary duties. Hostler will sign statement certifying to the qualification of applicant who will then be examined on such operating rules as Superintendent may consider necessary. Examination to be standard in character and of sufficient scope to establish ability to perform necessary duties. This will also apply to men assisting inside hostlers. Men assisting hostlers will take instructions in the performance of their duties from the hostler.

Sec. 9. Firemen having less than two years' experience as locomotive firemen and less than six months' experience on the division immediately prior to promotion to position of hostler will not be considered eligible to perform the duties of outside hostler. Firemen will be required to have six months' actual experience with Southern Pacific Company, or on some other road, as a fireman, to perform the duties of inside hostler.

Note: Experience as firemen as mentioned in this Article not to include time cut off of working list.

All men on the list who stand for this service and who have not qualified will do so. Men entering the service who have had six months' experience will qualify at once, and firemen made on the division will qualify as quickly as they have had six months' experience.

Firemen will be required to familiarize themselves (without expense to the Company) with the duties of hostlers by accompanying regular hostler and handling engines under his supervision a sufficient period to satisfy the applicant and regular hostler that fireman is qualified to perform the necessary duties. Hostler will sign statement certifying to the qualifications of applicant and applicant will be examined on such mechanical and operating rules as local Superintendents may consider necessary.

Hostler's qualifying statement will state that the man who was qualifying with him has been instructed as to the duties of hostler and in his opinion is qualified to perform the duties of hostler.

Hostler's examination will be standard in character and of sufficient scope to establish ability to perform necessary duties.

Men, who previous to the effective date of this Agreement have performed hostling service, will be exempt from qualifying examinations.

Firemen who have had the necessary experience to qualify as hostlers and who decline to so qualify will not be continued in service.

Sec. 10. Temporary vacancies in hostling service will be filled by a qualified hostler standing first-out on hostlers' extra list, who will hold same for ten days, unless relieved by assigned man or vacancy is taken by a senior hostler as provided in Section 11. If no qualified extra hostlers are available, the first qualified extra fireman from the extra list at

time call is made will be used and will hold same for seven days, unless relieved by assigned man or vacancy is taken by a hostler or fireman as provided in Section 11. When no qualified extra men are available, assigned hostler who has had the most time off duty will be used to fill the vacancy or perform the extra service, as the case may be, at pro rata rate.

Note: When no qualified extra firemen are available to fill temporary vacancies in hostling service, it will be permissible to use regular firemen without loss of compensation.

It is understood when officials have advance notice that regular hostler would lay off, effort would be made to fill vacancy by using extra man, even though it may involve deadhead movement of extra man from extra board to outside point.

Sec. 11. After a hostling position has been vacant three days, the senior qualified hostler, in point of seniority, applying for the position, shall have preference for same until the regular man returns. If qualified hostler does not make application for the vacancy, the senior qualified fireman, in point of seniority, applying for the position, shall have preference for same until regular man returns.

Note: A hostler or fireman taking a hostling vacancy under this Section will not be permitted to give up same and take another vacancy under this Section until after the expiration of ten days, unless displaced under the rules.

Sec. 12. On seniority districts where special rule is agreed to between Local Committee of the Firemen and the Local Officials of the Company requiring firemen or hostlers to remain on hostling positions for a stipulated period before being permitted to vacate same, special rules shall govern.

Sec. 13. On eight-hour assignments hostlers will be allowed 20 minutes, and on nine or more hour assignments 30 minutes for lunch between 4½ and 6 hours after starting work, without deduction of pay.

Sec. 14. Permanent hostlers will have preference for bulletined vacancies in hostling service, and preference of service will be governed by their seniority.

Note: | See Article 41, Section 5.

. Sec. 15. A fireman will not be permitted to vacate hostling assignment and mark up on extra list until the bulletin advertising his assignment has expired.

Sec. 16. Hostlers required to perform any of the following services in connection with their duties as hostler will be paid for the entire day's service at the yard engineers' rate applying to engine used to perform such service:

(1) Handling of cars of company material, fuel, cinders, sand, or the spotting of cars for loading or unloading the same.

- (2) Handling wrecker or relief outfit.
- (3) Handling commercial cars.
- (4) Moving of tenders or dead engines from back shop to roundhouse tracks, or vice versa.

- (5) Spotting engines for mechanics to take down or put up rods or set steam valves.
- (6) Moving train, engine crew of which is tied up under Hours of Service Law, from designated switch to yard receiving track and taking engine to roundhouse.
- (7) Handling part of train, engine crew of which is tied up under Hours of Service Law, by doubling train over and taking engine to roundhouse.
- (8) On dates hostlers perform service outlined in Paragraphs 6 and 7, the hostler helper will receive fireman's yard rate.

Note: Handling, spotting or filling water cars used exclusively as an auxiliary water supply for road engines will not be considered handling cars of company material as specified in Item No. 1.

Examples under Item No. 5:

Question No. 1: Will hostler be entitled to yard engineers' rate when servicing engine and placing it in house under its own power?

Answer: No, not for initial spot.

Question No. 2: If required to make an additional spot on same engine, under its own power, or to use another engine to make additional spot, how will hostlers be compensated?

Answer: Will be allowed yard engineers' rate.

Sec. 17. Regularly assigned hostlers, who are ready for service and do not lay off of their own ac(Plaintiff's Exhibit No. 2 continued) cord, will be guaranteed not less than six days per week. If hostlers assigned seven days per week do not work the following holidays (or the day preceding or following such holidays) New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, the day not worked shall be deducted. In computing weekly guarantee, the week will begin on Monday on seven day assignments, and on day following regular layover day on six day assignments.

In making up guarantee, time so allowed will be paid at rate applying to assignment.

Note: Reference to hostler helpers in this Article does not enlarge upon the right of Organization to legislate for hostler helpers.

It is understood that if the duties of hostlers are defined at some future time, such definition will apply to this rule.

ARTICLE 30. Electric Service.

Sec. 1. The Company concedes to the Organizations the right to negotiate, maintain and protect, under the protective laws of their Organizations, without segregation of committees, schedules covering rates of pay, rules of seniority and working conditions governing enginemen, trainmen and yardmen in both steam and electric service.

Sec. 2. Portions of the Pacific Lines in Alameda County and in Oregon that have been electrified, and any portion of the Pacific Lines that may hereafter be electrified and any new lines constructed for operation in connection therewith will not be segregated insofar as it affects the right of enginemen, trainmen and yardmen, in either steam or electric service, or, of the System General Committees to legislate for and represent such employees, and the rates of pay and working conditions provided for in steam service shall apply, subject to agreement provisions. None of the above to apply to street car service.

Sec. 3: Firemen shall have the preference for the positions of helpers on electric locomotives or multiple unit trains.

Sec. 4. Before an employee in the exercise of his seniority rights is assigned to runs in the electric service from steam service, or vice versa, the Company shall have the right to establish and require such tests and standard of efficiency as it may deem employee for the position desired in order to fully provide for the safety of operation of its trains. It is agreed that an engineer who has had experience in freight service only, going into electric service and remaining therein a number of years, desiring to exercise his seniority in fast steam passenger service, may be required to qualify by first-

(Plaintiff's Exhibit No. 2 continued) going into steam freight or local service or both on the same district for a reasonable period.

Sec. 5: The term "helper" as used in this schedule will be understood to mean the second man employed on electric locomotives or other than steam power, and firemen shall have the preference for the positions of helpers.

Sec. 6. Wherever electric or other power is installed as a substitute for steam, or is now operated as a part of their system on any of the tracks operated or controlled by any of the railroads, the locomotive engineers shall have preference for positions as engineers or motormen, and locomotive firemen for the positions as firemen or helpers on electric locomotives; but these rates shall not operate to displace any men holding such positions as of April 10, 1919.

(This Section is taken from Article VI, Supplement No. 24, and the inclusion by the Company was wholly account decision Case No. 27 425.)

ARTICLE 31. Deadhead Service.

Sec. 1. Firemen deadheading on Company's business on passenger trains will be paid for the actual mileage at 4.82 cents per mile and for deadheading on other trains at 5.46 cents per mile; provided that a minimum day at the above rates will be paid for the deadhead trip, if no other service is performed

(Plaintiff's Exhibit No. 2 continued) within 24 hours from the time called to deadhead. Deadheading resulting from the exercise of seniority rights or in the regulation of mileage under Article 43, Section 4, will not be paid for.

Question (a): In case where fireman, cut off working list, transferred from one seniority district to another for temporary service, is he entitled to time deadheading to or from division to which transferred or for time learning the road?

(b): In case where fireman is taken from workinglist and transferred from one seniority district to another for temporary service, is he entitled to timedeadheading to or from division to which transferred and for time learning the road!

Answer (a): No.

. (b): Yes.

Question: In case where extra list is reduced under Article 43, Section 8, and one or more of men cut off list is holding assignment or filling vacancy at outside point, is the man, or men, deadheaded out to furnish relief, entitled to payment for deadheading?

Decision: Yes; however, if it is known that mencut off list will return to terminal within four days from 12:01 A. M., date list is cut, no relief will be furnished, and man cut off will continue in service until return to terminal.

Question: Is fireman entitled to compensation for deadhead trip from outside point to terminal

(Plaintiff's Exhibit No. 2 continued) when run to which he was assigned is canceled?

Answer: Yes.

Question: Is fireman assigned to a run as provided in Section 8, Article 39, account no bids having been received, entitled to deadhead compensation?

Answer: Yes.

- Sec. 2. Where the Company moves firemen from one point to another to augment an extra list for a rush period or for a short period of time, the men so transferred will be paid for deadheading and when their services are no longer required at the point to where sent the same men will be returned and compensated for deadheading to the point or station where originally stationed.
- Sec. 3. Where extra lists are reduced at the request of the firemen's local committee, firemen dead-heading from one point to another as a result there-of will not be paid for the deadhead.

ARTICLE 32.

Watching and Firing Up Locomotives. -

Sec. 1. In case a fireman is required to fire up a locomotive, he shall be allowed two hours for such service, at forty-eight cents per hour. When it is desired that firemen will come on duty ahead of balance of crew for the purpose of starting fire in engine, such fireman will be given written instructions.

After fireman has been placed in charge of locomotive and is under pay, igniting oil in firebox, or taking such other means as may be necessary to keep fire alive does not constitute firing up a locomotive,

Firemen will not be required to start fires in locomotives where same are in charge of watchman, or roundhouse force. If any fireman is required to light fire before pay for other service begins, he will be allowed a minimum of two hours.

- Sec. 2. Firemen called to watch engines shall be paid deadhead rate going to and returning from point where engine is to be watched and will be paid through freight rate according to class of engine and district, with a minimum of eight hours for each day engaged in or held for such service; overtime after eight hours at 3/16 of the daily rate on the minute basis. If required to watch more than one engine, the rate applicable to the largest engine watched shall apply.
- Sec. 3. Firemen used to watch their own engine account no watchman available to be compensated under Article 12, but will not be used to watch more than one engine in addition to their own it.

Note: It is understood under Article 32, Section 2, the number of engines that firemen may be required to watch is not limited.

ARTICLE 33.

Court Service.

Sec. 1. Firemen, hostlers or hostler belpers ordered into court service as witnesses in the service of the Company, or to attend coroner's inquest, safety meeting, fuel meeting, board of inquiry or investigation, shall be compensated as follows, with necessary expenses when away from home terminal, expense account to be approved by the Department under which the man in question serves.

If required to lose time, they shall be paid not less than they would have earned had they been used in regular turn. If no time is lost but firemen, hostlers or hostler helpers are required by the Company to deadhead from terminal to another point or from some point to terminal before beginning day's work, or after completion of same, or on layover day, for any of the above purposes, they will be paid \$4.52 per day in addition to compensation for service performed on that date.

- Sec. 2. If called for the purpose of giving depositions at home terminals on regular layover days, and go out in regular turn on regular run, without loss of time, firemen, hostlers or hostler helpers will be paid for actual time consumed at 48 cents per hour.
 - Sec. 3. Firemen, hostlers and hostler helpers will not be called for any other service while being held off for court service.

Note: Regarding investigation, the provisions herein will apply when man is found not at fault.

ARTICLE 34. Held For Service.

Firemen held at the instance of the Company for service at any point shall be paid \$4.52 for each calendar day on which no service was begun.

ARTICLE: 35.

Held Away From Home Terminal.

Sec. 1. Firemen or helpers in pooled freight and in unassigned service, held at other than home teraninal, will be paid continuous time for all time so held after the expiration of 16 hours from the time relieved from previous duty, at the regular rate per hour paid them for the last service performed. If held 16 hours after the expiration of the first 24-Wour period, they will be paid continuous time for . the next succeeding eight hours, or until the end. of the 24-hour period, and similarly for each 24hour period thereafter. Should a fireman or helper be called for duty after pay begins, time will, except for deadhead service, be computed continuously, provided that if overtime accrues on the trip that portion of the overtime due to starting pay at the expiration of the 16-hour period; instead of a at the time actually required to report for duty. shall be paid at the pro rata rate, in order that time

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and one-half for overtime will not be so applied as to increase the rates paid for time growing out of the held-away-from-home-terminal rule.

This to apply to extra passenger firemen, except when filing a vacancy in assigned service.

The initial terminal time will be combined with the road time as continuous time.

Switching will be paid for in accordance with existing schedule provisions.

Sec. 2. Local Officials and Local Committees will jointly specify all home terminals for firemen and helpers.

ARTICLE 36.

Full Time Per Week Guaranteed.

Sec. 1. When, from any cause, more firemen are holding a certain run than can, per actual mileage of said run, average weekly 100 miles per day, mileage in excess of miles run will be allowed sufficient to give each fireman 100 miles for each day per week the train or trains composing the run are scheduled to run, with a minimum of 600 miles per week for each fireman, at standard pay for service and division on which such runs occur; provided, fireman is available for service on assigned or other runs. This not to apply to firemen holding runs the daily number of trains composing which is uncertain.

Sec. 2. In computing the weekly guarantee of firemen, the mileage so allowed will be paid at the

rate applying on the locomotive on which last used.

Sec. 3. In case fireman assigned to straightaway local freight service, or a series of branch freight runs, established mainline turnaround local freight service as specified in Article 14, Section 1, or roustabout service as specified in Article 20, lays off, the sum of the payments to the regular man and extra man, or men relieving him, exclusive of overtime, will equal the weekly guarantee.

Sec. 4. Local freight assignments will not be canceled unless it is known in advance that run will be discontinued for a period of three (3) days or more. However, in case of restoring run where assignment, territory or service is changed, it will be considered a new run and this Section will not apply; neither will this Section restrict the use of assigned local freight firemen in other service on dates their runs do not operate.

Note: The above will be construed as not changing present practice insofar as using crews out of terminals, where pool crews are maintained, to make up guarantee.

Question: In case fireman not used on assignment account insufficient rest, how should be be compensated for time lost?

Decision: In case fireman not used on assignment account not available under Hours of Service Law, he will be compensated full mileage of his assignment; where not available by reason of marking rest, he will not be compensated for time lost:

ARTICLE 37.

How Firemen Shall Be Run.

- Sec. I. Firemen assigned to regular runs, the trains composing which are designated by time table or by bulletin, shall be run on the trains to which they have been assigned; provided, when from any cause the runs become disarranged, firemen assigned to the same class of trains and running between the same terminals, shall be run first-in first-out until the runs can be rearranged.
 - Sec. 2. Firemen assigned to pooled runs, the daily number and kind of trains composing which are uncertain, shall be run first-in first-out on all trains not covered in Section 1, this Article, except when extra firemen are available work trains shall be manned from the extra list of firemen where such trains are sent out from points where extra lists are maintained.

Question: In case pool freight fireman not deadheaded from terminal to point for service to which entitled, how should be be compensated?

Answer (a): If there was not sufficient time and available train service on which to have deadheaded a pool freight fireman for service to which entitled, from terminal to point where service was performed, no allowance will be made to pool freight fireman who stood for the service.

(b): If investigation develops that there was sufficient time and available train service on which to

have deadheaded pool freight fireman entitled to the work, from terminal to point where service was performed, such pool freight fireman will be allowed the same earnings as paid the fireman injected into the pool, including overtime.

Note: Answer (b) will not apply in the event fireman is run around at terminal. In such instances the provisions of Section 17 of this Article will be applied.

Firemen assigned to the extra list shall be run first-in first-out of the terminal where assigned, working on all vacancies, runs and trips not otherwise provided for. If filling vacancy or augmenting pool, firemen shall be returned to point where assigned to extra list before being displaced from the run. Ordinarily extra lists will be maintained only at division or district terminals and effort will be made to fill-all vanacies or new runs. not otherwise provided for, from these lists. When necessary, extra lists may be established at outside. points where assigned runs terminate, or at an assigned helper station, but they will be maintained only for such time as the earnings of firemen thereon average the equivalent of six hundred miles per week. Such extra lists will not be established for less than ten days.

Where extra men are assigned to an outside point as provided above, such point will be considered as their home terminal and they will be used to fill

vacancies or perform extra work assigned to such extra list. If firemen thus assigned are run to division or district terminals in extra service where extra list is maintained, they will, upon arrival at a division or district terminal, be promptly deadheaded to their assigned territory or run back on light engine after required rest period without runaround penalty. If there are no men available at such point who are entitled to the work, men may be returned to their assigned territory in service.

Question: In case extra board fireman not deadheaded from terminal to any point for service to which entitled, how should be be compensated?

Answer (a): If there was not sufficient time and available train service on which to have deadheaded the extra fireman for service to which entitled, from terminal to point where service was performed, no allowance will be made to extra fireman who stood for the service.

(b): If investigation develops that there, was sufficient time and available train service on which to have deadheaded extra fireman entitled to the service, such extra fireman will be allowed the same earnings as paid the fireman who performed the service, including overtime.

Note: Answer (b) will not apply in the event fireman is run around at terminal. In such instances the provisions of Section 17 of this Article will be applied.

One man extra list may be maintained at any point. Fireman on such one man extra list will be guaranteed the equivalent of 600 miles per week during period such extra list is confined to but one man. In computing guarantee, Monday will be considered as first day of week, and in computing periods of less than one week, pro rata of guarantee for number of days assigned to extra list will be allowed.

In making up guarantee, mileage so allowed will be paid at the rate applying to the locomotive on which last used. Mileage deadheading to and from such extra list will be included in computing guarantee.

When such extra list is discontinued and extra man protects list beyond 12 o'clock noon, that day will be included in computing guarantee; likewise, man sent out for service on one man extra list reports and is placed on extra list prior to 12 o'clock noon, that day will be included in computing guarantee.

Note: When fireman, standing first-out, cannot be found, or who lays off at time called for deadhead trip to outside point, the fireman standing next out should be sent and paid for deadhead in both directions, and when the fireman who stood first-out is found or reports, he will be sent to outside point without deadhead compensation in either direction.

Sec. 4. When it is necessary, account no othermen available, to use firemen assigned to regular

runs or pooled freight service beyond the limits of their assignments, they will, upon arrival at a division or district terminal, be promptly deadheaded to their assigned territory or run back on light engine after required rest period without runaround penalty. If there are no men available at such point who are entitled to the work, men may be returned to their assigned territory in service.

- Sec. 5. Extra ffremen filling vacancies in assigned service shall be governed by the service conditions and allowed the rates of pay of the assigned men.
- Sec. 6. Extra firemen working on a run during the life of a bulletin will be paid in the same manner as if filling vacancy of a regular assigned man. If run is continued for less than six days, bulletin will be considered as void and firemen will be compensated as if bulletin had not been issued.
- Sec. 7. Should it be necessary to use pooled firemen on assigned runs account no other men available, they will take the conditions of the regular assignment and on return to terminal shall immediately go on the pool list, and should it again be necessary to send out a pooled man on the assignment for the above reason, same conditions will apply.

Above will not apply to pooled men used in switching service.

In case it is necessary to send pooled firemen to take an assignment with terminal of run away from

their headquarters because of no other men available, they will take the conditions of the regular assignment, but must be relieved and returned to their headquarters as soon as extra men are available.

Note: Nothing in this Section will prevent certain firemen holding runs for more than one trip or day's assignment as provided for in Section 8, this Article.

Sec. 8. When a regular passenger fireman is off, the pooled freight fireman, or the extra fireman filing a pooled freight vacancy as per Section 9, this Article, working on the same district or subdistrict, standing first out at the time call is made for passenger service, shall be called to relieve him and will be permitted to hold the run for ten days unless relieved by regular fireman returning.

When a fireman in pooled freight service lays off, or is filling vacancy in passenger service under the provisions of this Section, a "space" is marked up to be filled as provided in Sections 3 and 9, this Article. When call is made for service, the fireman standing first out on the extra list will be called and will remain in the freight pool until returned to point where assigned to the extra list before being displaced from the pool; he is then marked up at the foot of the extra list. Should the pooled freight fireman who laid off not have reported for work at the time "space" returns, the "space" remains in the pool and advances toward the "first out" posi-

tion in the same manner as would the turn of the regular man advance, and should the pooled freight fireman laying off not report before call is made, the extra man standing first out at the time call is made goes out in the "space." Should the pooled freight fireman laying off report before call is made, he will be placed at the foot of the pooled freight list at the time he reports for duty, in accordance with Section 11, this Article, and "space" will be eliminated, all firemen following "space" being advanced one turn. The "space" will be eliminated upon first return of fireman filling same after the regular man reports.

Sec. 9. After a regular or pooled freight or passenger fireman has been off for a period exceeding ten days, the older firemen on the seniority list, in their order of seniority, applying for the position, shall have preference for the run until the regular fireman returns.

A fireman taking a run in pool freight service must wait until the space is on the board before being marked up on same. The Company shall not be penalized as result of the application of this interpretation.

Note: A fireman taking a run under Section 9 will not be permitted to give up same and take another run until after the expiration of ten days, unless displaced under the rules or assigned by bulletin to another run.

Sec. 10. Firemen with less than one year's ex-

(Plaintiff's Exhibit No. 2 continued)

perience in road service and sixty days on the seniority district, will not be called for passenger service when other firemen are available.

Road service as mentioned above is understood to, include service as fireman on other railroads.

Sec. 11. A fireman in passenger or regular freight service reporting for work after lay-off must report not less than five hours prior to schedule leaving time of his train: A pooled freight fireman reporting for work will be placed at the foot of freight list at the time he reports. Firemen in pooled freight or extra service requesting layoff will not be permitted to mark up on the board for service until after the expiration of twelve hours.

Under Section 11, Article 37, it is understood this does not restrict the Company in requiring firemen to perform service in case other men are not available.

Sec. 12. A fireman after filling a passenger vacancy shall be returned to his place in accordance with his arrival in passenger service, with the understanding that no runarounds will be paid in effecting this change.

Sec. 13. When call is made for more than one freman for the same train, one or more of them to doublehead, help or deadhead on the train, the call, shall be made first, to man the train; second, to doublehead, third, to help; and fourth, to deadhead; using them first-in first-out. Upon their arrival at terminal they shall register in in accordance with

(Plaintiff's Exhibit No. 2 continued) their standing at the time call was made at the initial terminal.

Sec. 14. When a relief locomotive is sent out to take the place of a disabled locomotive in passenger service, the passenger train fireman will be entitled to take the relief locomotive and complete the trip.

Sec. 15. A fireman assigned to a regular run and, at the instance of the Company, called for other service, thus causing him to miss his regular run, will be paid for such other service not less than he would have earned had he been sent out in turn in the service to which assigned. This not to include overtime.

Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineers' extra list is exhausted, who should be called?

(b) Should a senior demoted engineer holding assignment as fireman become available after man used under (a) returns to terminal or completes day's work, who should be used?

Answer: (a) The senior available qualified man in accordance with his seniority as engineer.

(b) The senior available man.

Note: Question and Decision under Section 4, Article 36, to apply to this Section.

Sec. 16. Firemen assigned to regular runs, the trains composing which are designated by time table or by bulletin, who, through no fault of their own,

are not called in regular turn for the service to which assigned, shall be paid fifty miles, at the rate applying on the locomotive and in the service in which they should have been used; if required to remain out of service until their runs return, they shall be paid not less than they would have earned had they been sent out in their regular turns. This not to include overtime.

Sec. 17. Firemen assigned to pooled or extraservice, running first-in first-out, who, through no fault of their own, are not called in regular turn for the service to which they are entitled under the provisions of this agreement, the man first out shall be allowed fifty miles at the rate applying on the locomotive and in the service in which he should have been used, for each runaround and permitted to retain his position on the board.

Question: Firemen assigned to run with terminal at outside point, take their engine to district terminal, which is off their assigned territory, for boiler wash, or other necessary attention, after which they return with engine to their assignment. Is it permissible to couple this light engine into train out of district terminal on return movement, without runaround penalty to firemen standing first out at such terminal?

Decision: Yes. Provided train into which engine is coupled does not require and would not be given help out of such terminal.

Sec. 18. Extra firemen sent to outside points

where extra boards are not maintained, will, upon request, be relieved at the expiration of seven days. In relieving men in such cases, the Company will not be required to pay for deadheading other than what would have been allowed had the relief not been furnished.

Example: Pegular fireman assigned local freight, home terminal Santa Cruz, lays off 60 days. Fireman A deadheads to Santa Cruz and remains on vacancy seven days: is relieved by Fireman B, who remains on vacancy seven days. B is relieved by C, who remains on vacancy seven days. C is relieved at expiration of seven days by Fireman B. At expiration of seven days, regular man returns and D deadheads to San Francisco. Under this example, A would be allowed deadheading San Francisco-Santa Cruz and D would be allowed deadheading Santa Cruz-San Francisco.

Sec. 19. On seniority districts where special rules are made by Local Officials of the Company and the Local Grievance Committee of the Firemen on said districts, as to the filling of vacancies, arrangement of runs, under this Article, local rules shall govern.

Such local rule, when agreed upon, shall be submitted to the General Manager of the Company, or his representative, and the General Chairman of the Firemen for approval, and, if approved, shall become effective upon a date to be specified by the General Manager of the Company, or his repre-

(Plaintiff's Exhibit No. 2 continued) sentative, and the General Chairman of the Firemen, and will remain in effect until changed by the same authority negotiating same.

ARTICLE 38. Calling Firemen.

Sec. 1. Firemen will be called for all service as near as practicable one hour and thirty minutes before time required to report for duty. Where calling limits are established, this to apply only within such limits.

Sec. 2. Callers will be provided with a book, in which shall be shown the time the fireman called shall report for duty and the time he is to leave. The fireman shall sign the book and register the time at which called. Firemen called by telephone will sign a similar form at the registering point.

Question: What method should be followed in determining whether or not fireman may be used for additional service after making one or more trips?

Decision: Forecast should be made by taking the average time consumed for a period of 15 days for the train (if scheduled), or for trains handling similar traffic (if an extra), running in the direction and between the points trip is to be made, to which should be added the time fireman is required to be on duty before leaving, and the average time consumed in reaching roundhouse where fireman is

(Plaintiff's Exhibit No. 2 continued)
relieved, exceptions being when abnormal conditions
prevail, such as severe storms, washouts, and where

prevail, such as severe storms, washouts, and where interruptions of the line could be reasonably expected.

pected.

Question: How shall fireman be called for wrecking service.

Decision: When call is placed for wrecking outfit, fireman standing first out and entitled to the work shall be called, except in cases where main flack is blocked and to call firemen standing first out would delay wrecker beyond time members of wrecking crew are ready to proceed; in such case, the Company will be privileged to use firemen who can be secured with the least possible delay, without runaround penalty.

- Sec. 3. When firemen are called and not used, they shall be paid a minimum of two hours at fifty-five cents per hour; and at the rate of fifty-five cents per hour for all time held over two hours. Such time to be computed and paid for in addition to compensation for other service begun on the same date. If held less than eight hours, fireman shall stand first out; if held eight hours or more, he shall be placed at foot of list at time relieved.
- Sec. 4. Where the fireman ex helper called begins any actual service, the provisions of this Article shall not apply, and men shall be compensated under agreement provisions defining the beginning and ending of a day.
 - Sec. 5. When call is annulled and no instruc-

tions given fireman with respect to further duty, the first call will be paid for in accordance with Sections 3 or 4, the allowance depending upon whether or not any service is begun. However, if fireman is not released, and instructed to come on duty again later for service originally called for, or some other service, or service is changed while fireman is on duty, departing in service other than that originally called for, time of trip on which he departs will be computed from time coming on duty on original call.

ARTICLE 39. Bulletining Runs.

- Sec. 1. Rights of firemen to preference of rms shall be governed by seniority in service; except that a fireman assigned to a bulletined position will not be permitted to bid for and be assigned to his former assignment until such assignment has been once filled and thereafter becomes vacant, except in cases of displacement.
- Sec. 2. All new runs will be bulletined for sevendays for seniority choice of firemen as soon as created.

On bona fide new runs of from six to ten days' duration where it can be anticipated sufficiently in advance, such runs will be bulletined for seniority choice of firemen for seven days prior to first date service is to be performed, in order that the senior man bidding for same may be placed on the run.

Sec. 3. All vacant runs shall be bulletined on Saturdays and bulletin notice sent to each terminal promptly. Applications must be made in writing, copy of which, if filed with Roudhouse Foreman; will be considered as evidence in case of lost bids. Notice of assignment to runs bulletined on Saturday shall be issued on the following Saturday.

Sec. 4. Local chairmen shall be furnished copies of all bulletins and notices of assignments as soon as same are issued.

Sec. 5. Bulletin notices of assignment of senior applicants to runs secured by seniority choice will be sent to each terminal promptly, and the posting of such bulletins will constitute notice of assignment and will release men shown on such bulletin of assignment from previous runs or service if at home terminal of the run; if not at home terminal on date bulletin is posted, will be released from run or service upon first arrival at home terminal aftersuch date; except where the home terminal of the previous assignment is an outside point, in which case the Company will have 72 hours from 12:01 A. M. following the date bulletin assignment is issued to furnish relief at outside point. Should the Company fail to relieve a man holding a run with home terminal at outside point at the expiration of the 72-hour period, he will be paid, beginning at the expiration of the 72-hour period, if his new as signment is to be a regular run, not less than he

would have earned (exclusive of overtime) had he been placed on such regular run; if new assignment is to pool freight service, will be paid freight rates per class of locomotive and district, not less than 12½ miles per hour (terminals of service on which held to apply) for the service performed until placed in pool freight service.

- Sec. 6. Consideration will be given all applications for new or vacant runs until 8:00 A. M. of the date on which bulletins advertising same expire.
- Sec. 7. When either the home or the away from home terminal of a run is changed, a freight or mixed run is changed to a passenger run, a passenger run is changed to a mixed or freight run, an assigned run is put into a pool, when the leaving time of a train is changed two hours or more, it shall be considered a new run and bulletined accordingly. A fireman losing his run under these conditions may retain run during existence of bulletin.
- Sec. 8. When a run is bulletined and no bids are received, the youngest extra fireman, in point of seniority in service, will be assigned.
- Sec. 9. A regularly assigned fireman will be permitted, on written request, to give up his assignment and go on the extra list, with the understanding that fireman thus vacating his assignment will remain on same during life of bulletin and until relieved by the man who is assigned, and also that the Company will be at no expense for deadheading or time lost on account of such changes.

Note: It is understood in filling vacancies at outside points, extra man will be paid on basis governing regular man whose place he is filling, and fireman filling new position during life of bulletin will be compensated on the basis covered by assignment.

ARTICLE 40. Semiority Districts.

Sec. 1. All main line, and connecting branchlines not otherwise specified, designated as the Pacific Lines, shall be divided into seniority districts on which firemen, hostlers and hostler helpers shall hold permanent seniority rights as follows:

Western District: Between Oakland and Sacramento, Oakland and Tracy, Oakland and San Jose and Santa Clara.

Stockton District: Between Tracy and Fresno, Tracy and Sacramento, and Lathrop and Fresno.

Sacramento District: Between Sacramento and Red Bluff, Davis and Red Bluff, Sacramento and Sparks, including all branch lines terminating at Sacramento, including the Placerville Branch.

Sparks District: Between Sparks and Carlin.

Ogden District: Between Carlin and Ogden.

Shasta District: Between Red Bluff and Ashland, Black Butte and Klamath Falls, Klamath Falls, and Wendel, including Lakeview Branch.

Coast District: Between San Francisco and Santa Barbara.

Portland District: Between Portland and Ashland, Eugene and Klamath Falls.

San Joaquin District: Between Santa Barbara and Los Angeles, Los Angeles and Fresno, Mojave and Owenyo.

Los Angeles District: Between Los Angeles and Yuma, including all branch lines.

Tucson District: Between Yuma and El Paso via . Gila and Lordsburg, including Nogales Branch.

Globe District: Former Globe District of the former Arizona Eastern Railroad, Bowie to Miami (including branch lines).

Phoenix District: Former Phoenix Division of the Arizona Eastern Railroad, Hassayampa to Christmas, including branch lines, Phoenix to Maricopa and Casaba.

Sec. 2. When a railroad system, or portion thereof, is leased or absorbed by the Southern Pacific Company (Pacific Lines), the seniority rights of the firemen, hostlers and hostler helpers found employed thereon shall not be disturbed unless and until so determined by the General Grievance Committee and negotiated with the Management.

Sec. 3. When it becomes necessary to readjust the service of the merged roads on account of runs extending over other districts or a part thereof, such runs shall be assigned as provided in Section 5, this Article.

- Sec. 4. Should the Company construct a line connecting two districts, the firemen, hostlers and hostler helpers on the districts so connected shall hold seniority jointly on the connecting lines.
- Sec. 5. When established runs are so changed or new runs created, thus causing firemen or helpers to run over more than one district or part thereof, yacancies or open runs thereon shall be filled in such service in proportion to the mileage of each seniority district over which the run extends.
- Sec. 6. When firemen on two seniority districts desire to exchange seniority rights, they shall be permitted to do so, provided they secure the consent of the officials of the Company. The seniority date of both firemen to be that of the junior fireman, party to the exchange.

Engineers who have been promoted on the division where employed and subsequently exchanging seniority rights, as engineers may also exchange their firing rights in the same manner as they would have been privileged to do prior to their promotion.

Firemen making exchanges under this Section may make displacement on new seniority district in accordance with their seniority rights thereon,

Note: The provisions of Section 6, Article 40, Firemen's Southern Pacific Agreement, will apply to all portions of the Pacific Lines, including former El Paso and Southwestern.

Under the above, firemen may transfer in accordance with the provisions of this Section, from the

Rio Grande Division to the New Mexico Division, or vice versa, or from the Rio Grande or New Mexico Division to any other division on the Pacific Lines.

ARTICLE 41.

Seniority Dates of Firemen, Hostlers and Hostler Helpers.

Sec. 1. The Company shall print a separate seniority list of firemen, hostlers and hostler helpers on their respective seniority districts on January and July first of each year, a copy of which shall be posted in each roundhouse and at each terminal where roundhouse is not maintained. Copy will also be furnished the Chairman of the Firemen's Local Grievance Committee and General Chairman.

Sec. 2. The date of seniority of firemen shall be the date of their first service as firemen or hostlers when hired for such service.

Sec. 3. Firemen hired for road service prior to December 1, 1918, will be given a yard date as of December 1, 1918.

In the exercise of seniority rights under this section, firemen will use road date in bidding for road runs and yard date in bidding for yard assignments.

Sec. 4. Fifty per cent of additions to lists of firemen shall be experienced firemen.

Sec. 5. The date of seniority of hostlers shall be the date of their first service as hostler, and such list shall only include hostlers who were in the

service as hostlers August 19, 1918, and those who have or may, by mutual agreement (between the Management and the Firemen's General Committee), enter hostler service permanently in the future.

Sec. 6. The date of seniority of hostler helpers shall be their first service as hostler helpers.

ARTICLE 42.

Promotion of Firemen to Road Engineers.

- Sec. 1. Firemen shall rank on the firemen's roster from the date of their first service as firemen or bostler when called for such service, except as provided in Section 14, and when qualified shall be promoted to positions as engineers in accordance with the following rules:
- Sec. 2. Firemen shall be examined for promotion according to seniority on-the firemen's roster, and those passing the required examination shall be given certificates of qualification, and when promoted shall hold their same relative standing in the service to which assigned.
- Sec. 3. Upon failure to pass or refusal to take first examination, mechanical or transportation, a fireman will forfeit the right to promotion for six months, at the end of which time he must take or refuse second examination. In case of refusal or failure on second examination, his seniority rights will be arbitrarily reduced to one year, but he will

(Plaintiff's Exhibit No. 2 continued) be permitted to exercise his original seniority on any unassigned extra list on his seniority district, except in the application of Section 4, Article 23; Section 11, Article 29; Section 9, Article 37; Section 1, Article 39; or Section 6, Article 40, when he will be restricted to seniority date established after

Sec. 4. Firemen having successfully passed the required examination for the handling and care of locomotives, and knowledge of rules and regulations adopted and enforced by the Operating Department, shall be eligible as engineers. Promotion and seniority as road engineer to date from first service as engineer on any class of locomotive;

having failed or refused second examination.

Sec. 5. If for any reason the senior eligible fireman or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used establishes shall go to the credit of the senior eligible fireman or engineer to be hired, provided the engineer to be hired is available and qualifies within thirty days. As soon as the senior fireman or engineer to be hired is available, as provided herein, he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman to be promoted or engineer to be hired been available and the junior fireman not used.

Note: Qualification, as referred to herein, is not intended to include learning of road or signals.

- Sec. 6. As soon as a fireman is promoted he will be notified in writing by the proper official of the Company of the date of his promotion, and unless he files a written protest within sixty days against such date, he cannot thereafter have it changed. When a date of promotion has been established in accordance with regulations, such date shall be posted and if not challenged in writing within sixty days after such posting no protest against such date shall afterwards be heard.
- Sec. 7. No fireman shall be deprived of his right to examination nor to promotion in accordance with his relative standing on the firemen's roster, because of any failure to take his examination by reason of the requirements of the Company's service, by sickness, or by other proper leave of absence. Provided, that upon his return he shall be immediately called and required to take examination and accept proper assignment.
- Sec. 8. Where stenographic notes are taken of examination, firemen will be furnished copy upon request.
- Sec. 9. The posting of notice of seniority rank, as per Section 6, shall be done within ten days following date of promotion, and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank,
- Sec. 10. Firemen having successfully passed qualifying examinations shall be eligible as engineers. Promotion and the establishment of a date of

seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

Note: On roads where promotion is to road service only, promotion and establishment of seniority date as road engineer will obtain.

Section 11. On a seniority district where firemen are required to fire less than three years, all engineers will be hired:

If required to fire 3 and less than 4 years, 1 promoted and 1 hired;

If required to fire 4 and less than 5 years, 2 promoted and 1 hired;

If required to fire 5 and less than 6 years, 3 promoted and 1 hired;

If required to fire 6 and less than 7 years, 4 promoted and 1 hired;

If required to fire 7 and less than 8 years, 5 promoted and 1 hired.

On seniority districts where firemen are required to fire eight years or more, all engineers will be promoted.

The foregoing will not prevent committees from having discharged engineers re-employed or reinstated on their former seniority districts at any time.

Sec. 12. If the engineer to be hired is not available when needed and the senior qualified fireman is promoted, the date of seniority thus established shall fix the standing of the hired engineer, who, if available and qualified within thirty days from date senior qualified fireman is promoted, will rank immediately ahead of the promoted fireman.

The promoted fireman will retain his date of seniority as engineer and will be counted in proportion of promotions.

Sec. 13. In case an engineer is hired and used in actual service when, under requirements of Section 11 a fireman (or firemen) should have been promoted, the date of the seniority thus established shall fix the standing of the senior qualified fireman (or firemen) due to be promoted, provided he or they are eligible and qualify within thirty days, who shall rank immediately ahead of the hired engineer on the engineers' seniority list. The hired engineer will retain his date of seniority and be counted in proportion of engineers to be hired.

Sec. 14. The seniority date of the hired engineer shall be the date of his first service as engineer, except as provided in Sections 5, 12 and 13 of this Article. It is further provided that engineers hired or permanently transferred from one seniority district to another shall be given a date of seniority as fireman corresponding with their date as engineer.

ARTICLE 43.

Demotions and Lost Runs.

Sec. 1. When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

Second: That when reductions are made they shall be in reverse order of seniority.

- Sec. 2. When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services are required.
- Sec. 3. Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4800 miles

per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3800 miles per month.

Sec. 4. In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage, or equivalent thereof, within the limitation of 4000 and 4800 miles for passenger and 3200 and 3800 miles for other regular service, as provided herein. If, in any service, additional assignments would reduce earnings below these limits, regulation will be affected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached.

On road extra lists, sufficient engineers will be maintained to keep the average mileage, or equivalent thereof, between 2600 and 3800 miles per month; provided that when engineers are cut off the working list and it is shown that those on the extra lists are averaging the equivalent of 3100 miles per month, engineers will be returned to the extra lists if the addition will not reduce the average mileage, or the equivalent thereof, below 2600 miles per month.

Where separate extra lists are maintained for yard service, sufficient engineers will be maintained to keep the average earnings between 26 and 35 days per month; provided that when engineers are cut off the yard working list and it is shown that men are averaging the equivalent of 31 days per

month, engineers will be returned to service if the addition will not reduce the average earnings below 26 days per month.

Note: As to mileage regulations affecting parttime men, see addendum to Article 43, pages 118-119-120.

Sec. 5. Upon arrival of each trip, firemen shall register their total mileage, or equivalent thereof, on the roundhouse register, showing separately freight and passenger nileage, giving total mileage each class of service to date at completion of each trip.

Within five days after the close of the month, or 30-day period, fireman will furnish in writing to the Superintendent, or his designated representative, and to the B. L. F. & E. Local Chairman under whose jurisdiction he is working, the total amount of mileage, or equivalent thereof, earned in the preceding month or 30-day period in each class of service, i. e., passenger, freight, yard or hostling.

When Superintendent, or his designated representative, is notified by Local Chairman in writing that a fireman has failed to furnish mileage statement for the preceding period, the fireman will not be called for service until such statement is furnished, except in emergency, when no other fireman is available.

Local Chairman shall be privileged to review and compare statements furnished Superintendents, or their designated representatives, by each fireman,

showing total amount of mileage, or equivalent thereof, earned in preceding period, as set forth in second paragraph this section.

When a fireman has earned the maximum allowed smileage, or equivalent thereof, in a month or checking period, he will make request in writing to be relieved at the home terminal or layover point of his assignment. If the Company is unable to furnish relief and fireman is permitted to overrun the maximum allowed mileage, or equivalent thereof, in that month or checking period, he will, when relief is available and furnished, he held off his assignment in the following month one day for each 100 miles, or equivalent thereof, exceeded.

If fireman fails to make request for relief and continues in service after having earned the maximum allowed mileage, or equivalent thereof, for that month or 30-day period, he will, upon written request from Local Chairman, be held off his assignment in the following month two days for each 100 miles, or equivalent thereof, exceeded.

It is understood that in the application of the foregoing the Company will not be penalized for time claimed by reason of claimed impairment of seniority or deadheading when relief is furnished.

Note: In discussing Article 43, Section 5, present agreement, January 17, 1923, it was understood that Local Chairmen will have access to time books for the purpose of checking mileage made by firemen under this Section, excepting when timekeepers

are using books to get out payrolls or distributions. It was also understood that timekeepers will give the Local Chairman whatever assistance they can during working hours which does not interfere with performing regular duties.

Further understanding reached July 18, 1925:

When Superintendents or Roundhouse Foremen are notified by Local Committee in writing that firemen are neglecting or refusing to register their mileage as required by the rules, those so neglecting or refusing to register their mileage will not be called for service until they have complied with the rules, except in case of emergency when no other firemen are available. When officially notified by Local Chairmen that firemen have made necessary mileage specified in agreement covering the different classes of service, they will not be called for further service during that month unless some emergency makes their use necessary.

"Runarounds or time lost as a result of this understanding will not be allowed."

- Sec. 6. In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers.
- Sec. 7. When depression in business of any other cause necessitates the reduction of the number of firemen in service, reductions shall be made by taking off firemen in reverse order of seniority.
 - Sec. 8. When depression in business or any other.

(Plaintiff's Exhibit No. 2 continued) cause necessitates the reduction of the number of firemen in service, those taken off will retain all seniority rights and be returned to service in the order of their seniority; provided they promptly furnish the Company their address, in writing, copy to Local Chairman of the seniority district, as well as any subsequent change of address; and further provided they return to service within thirty days from the date their services are required and no physical disability incapacitating them for service has been incurred during their absence.

Sec. 9. A fireman having lost his run by reason of it having been discontinued or having been taken by a fireman his senior, or for any reason brought about through no fault or action of his own, shall be entitled to take any run on the same seniority district held by a fireman his junior in seniority; provided he exercises such privilege by making a trip on the run of his choice within 15 days following actual loss of run, unless prohibited by sickness or leave of absence, or is holding an assignment under Section 4, Article 23; Section 11, Article 29; or Section 9, Article 37.

A fireman having displacement under this section cannot thereafter make such displacement on a run on which he had an opportunity to bid, following loss of run, unless prevented by sickness or leave of absence.

Firemen making written request on Roundhouse Foreman to go on extra list, or fireman assigned

(Plaintiff's Exhibit No. 2 continued) under rules in effect to an extra list and who may be displaced therefrom, may exercise his seniority.

rights in the same manner as a fireman who has lost a regular assignment, taking any run held by a-

fireman his junior.

In the exercise of seniority rights under this section, fireman will use road date for road runs and yard date for yard positions, except when a reduction of the working list will result in his being cut off the working list, in which event he will be privileged to use his prior service date as a fireman with the company, to work on any massigned extra list; and if his prior service date will not permit him to work on an unassigned extra list, he will be permitted to use such prior service date to displace any fireman his junior holding a regular assignment in either road or vard service, or on an assigned extra list.

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Ex	a	m	\mathbf{pl}	es.	

4 5 6	and the same stands	R	ad Date	Yard Dale
Fireman	1	 Jan.	1, 1915	Jan. 1; 1912
Fireman	B	 Jan.	1, 1913	Dec. 1, 1918
Fireman	C	Dec.	15, 1912	Dec. 1, 1918

Position in road service is bulletined and bid in by Firemen A, B and C. Fireman C with road date of December 15, 1912, would be the senior applicant.

Position in yard service is bulletined and bid in by Firemen A, B and C. Fireman with yard date of January 1, 1912, would be the senior applicant.

Firemen A, B and C are working on an extra list

(Plaintiff's Exhibit No. 2 continued) which is reduced two men, which results in firemen's working list being reduced two men, Firemen B and C would be cut off, account Fireman Λ having a prior service date with the Company.

Firemen A, B and C are the senior firemen on reduced or cut-off list. Two firemen are to be restored to the working list for service on extra list. Firemen A and C would be restored account having an earlier service date with the Company than Fireman B.

Fireman A holds position on extra list and Firemen B and C are assigned to road jobs. Extra list is reduced resulting in Fireman A being cut off working list. He, Fireman A, would be entitled to use his prior service date with the Company and displace either Fireman B or C.

Note: In making displacements in all pool freight service, the junior assigned man will be displaced.

Question: How will displacement be handled under following circumstances?

- (a) Junior fireman is away from home terminal in service.
- (b) Junior fireman is standing first-out on board: (call for service not yet placed).
- (c) Junior fireman is standing first-out, and has been called for service.

Answer:

(a) Fireman making displacement will be placed at foot of pool board and junior fireman

(Plaintiff's Exhibit No. 2 continued) released and space eliminated when he arrives at home terminal of pool.

- (b) Fireman making displacement will be placed at foot of pool board and space held by junior fireman standing first out eliminated.
- (c) Junior fireman will depart on call. Fireman making displacement placed at foot of pool board and junior fireman released on return to home terminal of pool and space eliminated.

ARTICLE 44.

Temporary Transfer of Firemen.

- Sec. I. When there is a surplus of firemen on any seniority district, such firemen desiring to accept temporary employment on another seniority district under the jurisdiction of this agreement may, if they so elect, file application with the Master Mechanic of such district.
- Sec. 2. Firemen thus transferred will hold temporary rights on the district to which they are transferred, dating from the time of their first trip thereon; provided, they shall not lose any seniority rights on their home district if they return upon proper notification of division officials. Such firemen shall be privileged to return to their home district before additional men are hired for firing service.

Note: Question (a) and Answer thereto under Section 1, Article 31, with respect to deadheading applies to this Article.

ARTICLE: 45.

Layovers at Home Terminals.

- Sec. 1. Firemen will be allowed as much of their layovers as possible at terminals where shops are located or where a majority of the firemen on the runs reside, without detriment to the service or expense to the Company.
- Sec. 2. Firemen who are on the working list, either regularly assigned or extra, will be granted two free billings of their household effects per year when changing from one point to another on their respective divisions.

ARTICLE 46. Firemen Entitled to Rest.

- Sec. 1. No fireman shall be required to be on duty when he needs rest, nor shall a fireman be permitted to run on the road when his physical ability has been fairly taxed by previous service before he has had needed rest.
- Sec. 2. When a fireman feels that he needs rest he must so indicate, in writing, on the roundhouse or other register at the time he registers his arrival, giving the number of hours he requires, which must be eight, ten or twelve hours.

ARTICLE 47.

Leave of Absence.

Sec. 1: Committeemen representing employees governed by the provisions of this agreement will .

(Plaintiff's Exhibit No. 2 continued) be granted leave of absence and furnished transportation without unnecessary delay.

- Sec. 2. Any employee holding seniority rights on any district under the provisions of this agreement, accepting an official position with this Company, or being exclusively employed by the Brotherhood of Locomotive Firemen and Enginemen, in either case retains his seniority rights.
- Sec. 3. Any employee covered by the provisions of this agreement, having been in the service of the Company for a period of five years or more, may be granted leave of absence for one year, and shall retain his seniority rights, provided he does not accept a position with any other railroad or engage in business which would interfere with his standing as an employee of this Company. When such leave of absence is granted an employee, his run shall be bulletined. Upon his return to service he shall be privileged to displace any man his junior in the service in which he holds rights.

ARTICLE 48.

Cleaning Engines and Other Duties.

- Sec. 1. Firemen shall be relieved of all cleaning of engines.
- Sec. 2. Firemen shall not be required to do work that should be properly included in the duties of trainmen.
- Sec. 3. Firemen shall not be required to set up wedges, fill grease cups, or clean headlights at points

(Plaintiff's Exhibit No. 2 continued) where roundhouse force is employed. Neither will they be required to place on or remove tools or supplies from locomotives, fill lubricators, flange oilers, headlights, markers or other lamps at points where roundhouse force or engine watchman is employed.

ARTICLE 49.

Breaking Coal for Use and Assistance for Firemen.

- Sec. 1. Coal shall be broken at coaling stations to a convenient size for firing before being placed on locomotives.
- Sec. 2. On coal-burning locomotives, either passenger or freight, coal will be shoveled forward at specified points, whenever necessary. Or by men riding on locomotives for that purpose, so that it can be reached from deck of the locomotive.
- Sec. 3. It is understood that the Committees will take up with the officials the question of shoveling coal forward on tenders and determine the points where men shall be located to do this work.

ARTICLE 50.

Responsibility for Damages.

Firemen, helpers, hostlers or hostler helpers shall not be required to pay fines for breakages, loss of tools or damage of any kind.

ARTICLE 51.

Adjustment of Differences.

- Sec. 1. The right of any engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded.
- Sec. 2. Local Grievance Committees of the Brotherhood of Locomotive Firemen and Enginemen shall be recognized by Division Officials in the adjustment of all local grievances of employees governed by the provisions of this agreement; if not satisfactorily adjusted, an appeal may be taken through their General Chairman to the General Officials.

This Section outlines mode of procedure to follow in appealing cases and Local Chairman should comply with same literally.

- Sec. 3. No employee governed by the provisions of this agreement shall be suspended or discharged, except in serious cases where fault is apparent beyond reasonable doubt, until he has had a fair and impartial hearing before the proper officials. Ordinarily such hearing will be held within five days from date of suspension.
- Sec. 4. In all cases where a formal investigation is held the employee under investigation will be

(Plaintiff's Exhibit No. 2 continued)
entitled to representation by the Local Chairman
of his Organization or by any employee of the same
grade in actual service on the employee's seniority
district.

Sec. 5. Interrogations will be made by the Superintendent, or his representative, who is holding the investigation. After he has completed the direct examination, officers of the Company who may be attending the investigation will be allowed to interrogate the witness.

If the employee's representative desires to ask any questions pertaining to the case of the man represented he will be allowed that privilege.

Sec. 6. Demerits will not be charged against a man's record without giving him an opportunity for defense, allowing him to present his side of the case.

Sec. 7. If the Chairman of the Local Committee requests a transcript of the testimony in an investigation that has been made, it will be furnished.

Note: It is understood the above rules cannot be construed to have been properly observed unless the employee and/or his representative are confronted with all the charges and evidence and provided with a copy of transcript of all evidence.

Sec. 8. If charges are not sustained, fireman, hostler or hostler helper shall be reinstated and paid \$4.52 for each calendar day held out of service.

Sec. 9. Where charges are made regarding firemen, helpers, hostlers or hostler helpers, same must be in writing.

- Sec. 10. When time claimed on trip cards is not allowed, the fireman, hostler or hostler helper interested will be promptly notified in writing by the Superintendent why said time was not allowed.
- Sec. 11 (a). In case the Brotherhood of Locomotive Firemen and Enginemen's Local Committee is unable to agree with Division Officials as to the interpretation of articles in this agreement, the mater will be submitted to the General Manager, or his authorized representative, for decision; copy of the decision to be furnished the General Chairman of the Firemen's General Grievance Committee.
- (b) When claims are presented to the Superintendent by the Local Chairman, the latter will submit a statement of facts in the case and refer to schedule rule or settlement on which the Organization bases its claim. If the claim is not allowed by the Superintendent, he will furnish the Local Chairman with a statement of facts and reasons why claim is not allowed. If conference is desired by the Organization, same will be granted without unnecessary delay. If claim is not disposed of in conference, the Superintendent, or his representative, and the Local Chairman should prepare a joint statement of facts addressing same jointly to the General Manager, or his representative, and the Chairman of the General Committee, B. of L. F. & E. If Superintendent and Local Chairman fail to agree on a joint statement of facts, they will prepare separate statements, setting forth their contentions. It

(Plaintiff's Exhibit No. 2 continued) is understood no argument should be used in the statement of facts.

- Sec. 12. Committeemen will not be discriminated against for serving on committees representing employees governed by the provisions of this Agreement.
- Sec. 13. When readjustment of runs is to be made, the matter will be taken up for adjustment upon application of the firemen through their Local Grievance Committee.
- Sec. 14. Firemen, hostlers, or hostler helpers dismissed from the service of the Company and subsequently reinstated will be permitted to make displacement under the provisions of Article 43, Section 9.
- Sec. 15. Where settlements are made in adjustment of certain claims, other claims that are of similar nature can usually be adjusted on the same basis, and so far as similarity of conditions will permit, this will be done.
 - Sec. 16. Applicants for employment entering the service shall be accepted or rejected within ninety (90) days after the applicant begins work. When applicant is not notified to the contrary within the time stated, it will be understood that the applicant becomes an accepted employee, but this rule shall not operate to prevent the removal from service of such applicant, if subsequent to the expiration of ninety (96) days it is found that information given by him in his application is false.

ARTICLE 52.

Two Firemen.

When a second figeman is deemed necessary on. coal-burning locomotives in freight service weighing more than 200,000 pounds on drivers, the matter will be taken up with the management by the Committee. Failing to reach a settlement, the matter shall be referred to an Adjustment Commission to be composed of five (5) persons, two (2) of whom are to be chosen by the Railroad Company, two (2) by the Committee, and one (1) to be selected by the four (4) thus chosen, who shall be the Chairman of the Commission. Should the four men fail to agree on the fifth, then three days after the last of the four men have been selected, the fifth man shall be named by the National Mediation Board, If, for any reason, the selection of the fifth man cannot be made by the National Mediation Board, he shall be named by the United States District Judge of the district in which the controversy may have arisen. All expenses incurred in connection with the settlement of such matters shall be borne equally by the two parties to the controversy.

ARTICLE 53.

Official Record of Weight on Drivers.

Sec. 1. For the purpose of officially classifying locomotives, the Company will keep bulletins at all terminals showing actual weight on drivers of all

locomotives in the service. It is the understanding the weight on drivers refers to weight on drivers of locomotives in working condition, which would include "sand" in the sand box, "water" in the boiler, and "fire" in the fire box.

Sec. 2. Where locomotive is equipped with trailer truck booster, or where locomotive is equipped with tender booster, total weight on truck so equipped will be added to weight on drivers. Total weights produced by such increased weights shall fix the rates for the respective classes of service?

ARTICLE 54.

Vouchers.

When shortages of \$2.50 or over are established, vouchers will be issued to cover; shortages of less than \$2.50 will be carried on following payroll. Where the fault of such shortage rests with the fireman, hostler or hostler helper, same will be carried to next payroll regardless of the amount:

ARTICLE 55.

Service Letters.

Employees covered by the provisions of this agreement, leaving the service for any cause, will be furnished service, letter on request, regardless of length of service.

ARTICLE 56, Meals En Route.

Firemen will be given a reasonable time to eat between terminals if hours on duty make it necessary or conditions of service permit.

When men desire to eat, both the train and engine crews should eat at the same point, notifying the dispatcher in advance where they intend to do, so. Where crews stop for this purpose they will reduce the time of such delay to the minimum.

ARTICLE 57. Correspondence.

Correspondence will receive attention of officials and reply made as promptly as possible.

Conferences will be given with as little delay as possible.

ARTICLE 58.

Rules Governing Handling and Compensating Firemen Under the Federal Hours of Service Law.

- Sec. 1. Under the laws limiting the hours on duty, crews in road service will not be tied up unless it is apparent that the trip cannot be completed within the lawful time; and not then, until the expiration of fourteen hours on duty under the Federal law, or within two hours of the time limit provided by State laws, if State laws govern.
 - Sec. 2. If road crews are fied up in a less number of hours than provided in the preceding para-

graph, they shall not be regarded as having been tied up under the law, and their services will be paid for under the individual schedules of the different roads.

- Sec. 3. When road crews are fied up between terminals under the law, they shall again be considered on duty and under pay immediately upon the expiration of the minimum legal period off duty applicable to the crew, provided, the longest period of rest required by any member of the crew, either eight or ten hours, to be the period of rest for the entire crew.
- Sec. 4. A continuous trip will cover inovement straightaway or turnaround, from initial point to the destination train is making when ordered to tie, up. If any change is made in the destination after the crew is released for rest a new trip will commence when the crew resumes duty.
- Sec. 5. Firemen in train service fied up under the law will be paid continuous time from initial point to tie-up point. When they resume duty on continuous trip, they will be paid from tie-up point to terminal on the following basis: For fifty (50) miles or less, or four (4) hours or less, one half day; for more than fifty (50) miles or more than four (4) hours, actual miles or hours, whichever is the greater, with a minimum of one day. It is understood that this does not permit running firemen at

(Plaintiff's Exhibit No. 2 continued) terminals unless such practice is permitted under the pay schedule.

Question: Does minimum allowance of 50 miles for movement from tie-up point to terminal as specified in Section 5, Article 58, apply to cases where crews tie up under Hours of Service Law at a point within the yard limits of terminal yard?

Decision: Crews tying up under law within terminal yard limits and before reaching station mile board, shall be paid under provisions of these Sections and Articles, but these provisions will not apply to crew tied up after passing station mile boards. At stations where mile boards not provided, location or designated point agreed upon will govern.

Sec. 6. Road crews tied up for rest under the law and then towed or deadheaded into terminal, with or without engine or caboose, will be paid therefor as per Section 5, the same as if they had run the train to such terminal.

Sec. 7. If any service is required of an engine crew, or if held responsible for the engine, during the tie-up under the law, they will be paid for all such service.

See, 8. The foregoing Sections constitute an agreement for the Railway Companies named in the original memorandum and their Conductors, Trainmen, Engineers and Firemen, as to runs that are tied up in conformity with the law, and becomes a part of the schedules or agreements of these roads.

and subject to their provisions as to amendment by mutual consent. Nothing herein contained shall be construed to amend or annul any rule in the various agreements with individual roads.

End of Article 58.

General.

Question 57, Interpretation No. 1, Supplement No. 24: 7

Should all service, both passenger and freight, formerly paid on a monthly, daily, or trip basis, be stablished upon the mileage basis and paid the rates provided regardless of the fact that this may in some cases effect a reduction in present compensation?

Decision: Rates of the order shall apply for the respective classes of service, but former higher rates shall be retained.

Question 64, Interpretation No. 1, Supplement No. 24:

Where daily rates are in excess of standard, how, shall overtime rates be determined?

Decision: Service paid on a passenger basis, oneeighth of such daily rate, per hour. Service paid on the freight basis, 3/16 of such daily rate, per hour.

ARTICLE 10 (e), SUPPLEMENT No. 24.

Special provisions of schedules for irregular conditions, such as crews called and not used, dead-heading, attending court and investigations, and similar miscellaneous rules covering conditions

which are not connected with the handling of a train and which provide for payments on the basis of "overtime rates," shall be changed to provide for payments at the former rates, it being the intent that the time and one-half basis shall not apply in such cases. Where, under such rules, time, in excess of the limits of the day is paid for as overtime, the overtime rates of this order apply.

Question 71, Interpretation No. 1, Supplement No. 24:

Are special allowances based on, say, 30 minutes or less not to count; over 30 minutes one hour, changed to a minute basis by paragraph (b) of Article 7?

Decision: No. The Supplement provides the minute basis only in connection with road overtime.

Understandings Between General Committees and Management,

ARTICLE 29.

Hostlers and Hostler Helpers.

Following agreement reached between General Committee of Adjustment, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, and Southern Pacific Company (Pacific Lines), in connection with division of hostling service between engineers and firemen. Oakland and Alameda Piers, superseding understanding reached January 17, 1928, signed by Mr.

P. O. Peterson, General Chairman, B. L. E.; Mr. J. A. Ford, former General Chairman, B. L. F. & E., and Mr. R. McIntyre, Assistant to General Manager, Southern Pacific Company, also superseding letter April 11, 1931, to Mr. P. O. Peterson, General Chairman, B. L. E., signed by Mr. R. McIntyre; revising paragraph (3) of said agreement, January 17, 1928;

(1) Two hostler positions at Oakland Pier, assigned from 12:40 P. M. to 8:40 P. M. and 4:40 P. M. to 12:40 A. M., and one hostler position at Alameda Pier, assigned from 6:20 A. M. to 2:20 P. M. will be filed by the three senior engineers making application, in accordance with Section 3 Article 33, Engineers' Agreement; and will perform same duties performed by hostlers.

Three positions herein referred to will be paid yard engineers' rates; but Article 29, and interpretations thereon, Firemen's Agreement, will govern their working conditions.

(2) Engineers before being assigned to this service will qualify as outlined in Section 3, Article 17, Engineers, and Article 29, Article 30, Section 4, Firemen's Agreements, and will not be displaced for a period of six months; neither will such engineers be privileged to exercise their seniority in bidding into vacancies or new positions for a period of six months (unless cut off working list) and will remain on assignments during life of bulletin and until their relief qualifies. Should these men be

(Plaintiff's Exhibit No. 2 continued)
used in emergency to handle train, they will be paid
minimum passenger guarantee.

- Vacancies on the above positions, i. e., Oakland and Alameda Piers, will be filled by engineers from the road extra-list, who will be required to familiarize themselves with the movements and duties of hostlers in order that they may perform their duties satisfactorily, and will be paid vard engineers' rate of pay and remain on such positions until the regular hostler returns to work or they are relieved by regular man assigned by bulletin. If vacancy is for a period of seven days or over, the extra engineer filling the vacancy will be permitted, after the seventh day, to return to road extra list if he makes application in writing to do so and provided there is a qualified extra engineer available. on road extra list to relieve him. All engineers on the road extra list, who have not qualified for electric service, shall do so.
- (4) Should the hostler force be reduced, the following formula will govern:

Present assignment (7 positions): 4 Reduction in force		3 engineers
Assignment (6 positions) 3 Reduction in force		
Assignment (5 positions) 3 Reduction in force 1		
Assignment (4 positions) 2 Reduction in force	,	2 engineers 1 engineer

Assignment (3 positions) 2 hostlers 1 engineer Reduction in force 1 hostler

Assignment (2 positions) 1 hostler 1 engineer
Reduction in force 1 hostler 6
Reduction in force 1 hostler

The above agreement shall remain in effect until either party desiring to change any of the foregoing shall have given the other parties thirty days' notice in writing of the change or changes desired. Conferences shall be arranged by Management as soon as practicable following expiration of such notice. For the Organizations:

(Signed) P. O. PETERSON.

General Chairman, B. L. E.

(Signed) C. W. MOFFITT.

Acting General Chairman.

B. L. F. & E.

For the Southern Pacific Company (Pacific Lines):
(Signed) R. McFNTYRE,

Assistant to General Manager,

Dated at San Francisco, Calif., August 12, 1932.

ADDENDUM TO ARTICLE 43: APPLICATION OF MILEAGE REGULATIONS TO PARTITIME MEN.

Excerpts from letter of November 30, 1934, from Mr. Wm. M. Leiserson, Chairman, National Mediation Board, to Mr. A. Johnston, Grand Chief Engineer, Brotherhood of Locomotive Engineers, Mr. D. B. Robertson, President, Brotherhood of Loco-

(Plaintiff's Exhibit No. 2 continued)
motive Firemen and Enginemen, Mr. J. A. Phillips,
President, Order of Railway Conductors, and Mr.
A. F. Whitney, President, Brotherhood of Railroad Trainmen, concerning the application of mileage regulations to part-time men, the conditions of
which were, before the President's Emergency
Board of April-May, 1937, accepted by Mr. G. W.
Laughlin, First Assistant Grand Chief Engineer,
Brotherhood of Locomotive Engineers, and Mr.
C. V. McLaughlin, Vice President, Brotherhood of
Locomotive Firemen and Enginemen, and concurred
in by the Carrier, as disposing of Case No. 11 that
was pending before that Board:

"We understand also from your conversation with respect to part-time men, whether they be engineers and firemen or conductors and trainmen, a sound and practical basis for adjustment would be to permit each organization to regulate the conditions of the part-time man during the time that these men are employed at the occupation covered by such organization. Thus if the mileage limitation on any road was 3300 miles for firemen and 3800 miles for engineers, a man in freight service making 1500 miles as a fireman, then used as emergency engineer for 500 miles, would be permitted to make only 1300 additional miles as a fireman; or a man making 2000 miles as an extra cu gineer-who is cut off the engineer's extra board. would be permittet to make only 1300 additional miles as a fireman. On the other hand, a

(Plaintiff's Exhibit No. 2 continued) fireman who has made his maximum militage of 3300 miles and has been taken off on that account, might be used as an emergency engineer or go on the engineers' extra board for the remainder of the month to make the additional 500 miles up to 3800 in accordance with the engineers' mileage limitation."

"We understood from the discussions also that nothing in such a regulation of the parttime men would prevent any organization from regulating the mileage of its own men by adjustment at the end of each month or checking period, in order to offset any excess mileage that an individual may have made. That is to say, if a trainman had made 400 extra miles as an emergency conductor in any one month or checking period, and if at the end of that month or checking period he was working as a trainman, the trainmen's organization would have authority to regulate him to bring his mileage within the trainmen's limitation. If, on the other hand, the man was working as a conductor at the end of the month or checking period, he would be subject to the regulation of the conductors organization. The point, as we understood it, was that each organization would be free to make adjustment for excess mileage of the men under its jurisdiction to bring them within the mileage limitations set by that organization. And the fact as to whether

a man was subject to the jurisdiction of one organization or another would be established by the craft that he was working in at the end of the month or checking period."

ARTICLE 59.

Changing Agreement.

- Sec. 1. This agreement is made subject to any subsequent Municipal, State or Federal legislation.
- Sec. 2. This agreement shall remain in effect until either party desiring to change any of the foregoing rules or regulations shall have given to the other party thirty days' notice in writing of the change or changes desired. Conference to be granted as soon as practicable following expiration of such notice.
- Sec. 3. All previous agreements are hereby annulled.

Dated at San Francisco, Calif., June 1, 1939. For the Southern Pacific Company (Pacific Lines):

L. B. McDONALD

General Manager.

For the Brotherhood of Locomotive Firemen and Enginemen:

C. W. MOFFITT
General Chairman.
C. G. HOLMBERG
First Vice Chairman.
W. W. McARTHUR
Secretary-Treasurer.

TABLE SHOWING TIME AFTER WHICH OVERTIME ACCRUES ON RUNS 100 MILES TO 199 MILES IN LENGTH, ON SPEED BASIS OF 1212 MILES PER HOUR.

Distance, miles	Overtime accrues after hours	Distance, '	Overtime accrues after hours
100	8:00	. 132	10:34
.101	8:05	133	10:38
102	8:10	134	10:43
103	8:14	135	10:48
104.	8:19	136	10:53
105	8:24	. 137	10:58
106	8:29	138	11:02
107	8:34	139	11:07
108	8:38	140	11:12
109	8:43	141	11:17
110	8:48	1/42	11:22
111	5:53	/143	11:26
112	8:58	144	11:31
113.	9:02	145	
411	9:07	146	11:41
115	9:12	147	11:46 -
116 .	9:17	148	11:50
117.	9/22	149	11,55.
118	9:26	150	12:00
119	9:31	151	12:05
120	2:36	152	12:10
121	9:41	177	12:14
122 /	9:46	. 154	12:19
123	9:50	155	12:24
124	9555	156	12.29
125	10:00	157	12:34
126	10:05	158	12:38
127		159	12:43
128	10:14	160 :	12:48
129	10:19	161	12:53
130	16:24	162	12:58
131	10:29	163	13:02
			1,1,1,0

			*.	* 1
Distance, miles	Overtime accrues after hours	Distance, miles		Overtime accrues after hours
164	13:07	182		14:34
• 165	13:12	. 183		14:38
166	13:17/	184	1	14:43
167	13:22	185		14:48
. 168	13:26	186		14:50
169	13,31	187		14:58
170	13:36	188		15:02
171	13:41	189		15:07
172 3	13:46	190		15:12
173	13:50	191	*	15:17
174	13:55	192		15:20
175	14:00	193	- 1	15:26
176	14:05	194		15:31
177	14:10	195		15:36
178	14:14	196	* •	15:41
179	14:19	197		15:46
180	14:24	198		15:50
181	14:29	199	masses Assessed the con-	15:55

TABLE SHOWING TIME AND ONE-HALF FOR OVER-TIME (1834 MILES PER HOUR) EXPRESSED IN MH.ES. FROM 3 MINUTES TO 8 HOURS, IN-CLUSIVE

Overtime	Miles	Overtime	Miles	Overtime	. Miles
. 3	1	1:52	35	3:41	69
6	2	1:55	36	3:44	70
10	3.	1:58	- 37	3:47	71
. / . 13 ·	4	2:02	38	3:50	72
16	5	2:05	39	3:54	73
.19	6 .	2:08	- 40	3:57	74
(h)	7.	2:11	41	4:00	75
26	8	2:14	42	4:03	. 76
29	9-	2:18	43	4:06	77
32	10	2:21	44	4:10	78
35	1-1	2:24	45	4:13	79
38	12	2:27	46	4:16	80
. 42	13	.2:30	47	4:19	81
45	14	2:34	48	4:22	82
-48	15	2:37	49	4:26	83
51 .	16	2:40	50	4:29	84
54	17 .	2:43	-51	4:32	85
58	18	2:46	53	4:35	86
1:01	. 19	2:50	53	4:38	. 87 . 2
1:04	20	2:53	54	4:42	88
1:07	21 '	2:56	. 55	4:45	89
1.:10	22	2:59	. 56	4:48	90
/1:14	23	3:02	. 57	4:51	91
1:17	. 24	3:06	58	4:54	92
1:20	.25,	3:09	59	4:58	93
1:23	26.	3:12	60	5:01	94
1:26	27	3:15	61	5:04	95
. 1:30	28	3:18	60 .	5:07	96
1.33	. 29	3-22	63	5:10	97
1:36.	- 30 -	3:25	. 64	5:14	5 98
1:39	. 31	3:28	65 -	5:17	99
J.:42	32	3:31	66	5:20	100
1:46	33	3:34	67	7.92	100

(Plaintiff's Exhibit No. 2 continued)

Overtime	Miles	Overtime	Miles	Overtime .	Miles
5:30	103	6:21	119	7:12	135
5:33	104	6:24	120	7:15	: 136
. 5:36	105	6:27	121	7:18	137
5:39	. 106	6:30	122	7:22	138
5:42	107	6:34	-123	7:25	* 129
5:46	108	6:37	124	7:28	140
5:49	109	6:40	125	7:31	141
5:52	110	6:43	126	7:34	142
5:55	111	6:46	127	7:38	14:
5:58	112	6:50	128	7:41	144
6:02	113	6:53	129	7:44	145
6:05		6:56	130	7:47	146
6:08	115		131	7:50	147
6:11	116	7:02	132 -	-7:54	11489
6:14	. 117	7::06	133	7:57	149
6:18	118	.7:09	134	8:00	150

[Endorsed]: Plaintiff's Exhibit No. 2. Filed 10/10/40. Walter B. Maling, Clerk. By Harry L. Fouts, Deputy Clerk.

PLAINTIFF'S EXHIBIT No. 7

RULES CONTAINED IN ENGINEERS AND FIREMEN'S AGREEMENTS, SOUTHERN PACIFIC
COMPANY (PACIFIC LINES), IN EFFECT VARIOUS PERIODS UP-TO-DATE, COVERING THE
RIGHTS OF PROMOTED AND HIRED ENGINEERS TO TAKE ASSIGNMENTS AS FIREMEN
BEFORE AND AFTER THE CHICAGO JOINT
WORKING AGREEMENT MILEAGE REGULATION WAS SUBSCRIBED TO BY THE CHIEF
EXECUTIVES OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND BROTHERHOOD
OF LOCOMOTIVE FIREMEN AND ENGINEMEN,
DATED MAY 17, 1913, AND REVISED MAY 4, 1918.

FIREMEN

ENGINEERS

Sec. 32 (a) and (b), Engineers' Agreement, effective January 1, 1903:

(a) When there is a surplus of engineers for the business of the road, oldest engineers in point of sentority shall have preference for employment.

(b) Whenever it becomes neces sary to reduce the force of engineers in road service, it shall be done by taking off engineers per the seniority list of the division, taken in geverse order: had engineers thus taken from road service shall be privileged to take positions on switch engines and as hostlers as per their order of seniority; provided, that in so doing, they may not displace men.

Firemen's Agreement, effective April 1, 1907, appearing in back of Agreement under caption; Requests Granted':

Second Effective March 18, 1908. When depression in busitiess; or any other cause, nec-

FIREMEN.

essitates a reduction of engineers' seniority lists, engineers thus taken off, according to their seniority, who have been promoted from ranks of firemen on division, may resume their tornier rights as firemen, and men returned to firing service on this account shall retain their seniority as engineers, provided they return to the higher grade of service in regular order, unless prevented by sickness or other good cause."

Sec. 36 (a), Firemen's Agreement, effective May 16, 1910:

When depression in business, or any other cause, necessitates a reduction of engineers' read seniority lists, those taken off who have been promoted from the ranks of firemen on seniority district, may, if they so effect, resume their former seniority standing as firemen, and will retain all acquired seniority provided they return to the higher grade of service in regular order, unless prevented by sickness or other good cause.

ENGLNEERS

old in the service, filling positions as switch engineers or hostlers, or men in such positions who are not considered in line of promotion to road service."

Art. 31, Sec. 5 (n?, (b), (c) and (d), Engineers' Agreement, effective March 1, 1908:

(a) When there is a surplus of engineers for the business of the district, the oldest engineer in point of seniority shall have preference for employment.

(b) When it becomes necessary, to reduce the force of engineers in road service on any district. it shall be done by taking off engineers per engineers' road' seniority list of such district, taken in reverse order; engineers thus set back from road service shall be placed on the road extra list. When it becomes necessary to reduce the force of engineers on the road extra list, it shall be done by taking off engineers per engineers' road seniority list of such district, taken in reverse order; engineers thus set back from road extra list shall have privilege to take positions, in yard service, provided they do not displace engineers in yard service, who are not in line of promotion to road service, and further provided, they do not dis place engineers in yard service. who are in line of promotion to

FIREMEN

ENGINEERS

road service, whose seniority as yard engineer is greater than the seniority of the road engineer in both road and yard service combined.

- (c) Road engineers taking positions in yard service on account, of slack business, forfeit thereby no road seniority rights, provided return to road service is made in, regular order of road engineers."
- (d) The cases of engineers who are set back from extra list and left without employment and who may desire to accept temporary employment on other railroads pending opportunity to return to further service with this Company, such return to be within ten days' notice, men to lose no seniority by reason of acceptance of such other employment, will be taken up on their merits by Superintendent, in conjunction with Master Mechanics, and decided accordingly.'
- Art. 32, Sec. 5 (a), (b), (c) and (d), Engineers' Agreement, effective February 20, 1911:...
- when there is a surplus of engineers for the business of the district, the oldest engineer in point of seniority shall have preference for employment.
- to reduce the force of engineers in read service on any district.

FIREMEN

ENGINEERS

it shall be done by taking off engineers per engineers' roadseniority list of such district. taken in reverse order; engineers thus set back from road service shall be placed on road extra list. When it becomes necessary to reduce the force of engineers on the road extra list, it shall be done by taking off engineers per engineers' road seniority list of such district, taken in reverse order: engineers thus set back from road extra list may be placed on an emergency list and shall have privilege to take positions in vard service, provided they do not displace engineers in yard service who are not in line of promotion to road service and further provided they do not displace: engineers in yard service who are in line of proniotion to road service, whose seniority in yard service is greater than the seniority of the road engineer in both roadand vard service combined.

- (e) Road engineers taking positions in yard service or being placed on emergency list on account of slack business, forfeit thereby no seniority rights, provided return to road service is made in regular order of road seniority.
- (d) The cases of engineers who are set back from extra list and left without employment and who

FIREMEN.

ENGINEERS

may desire to accept temporary employment on other railroads pending opportunity to return to further service with this Company, such return to be within thirty days' notice, men to lose no seniority by reason of acceptance of such employment, will be taken up on their merits by Superintendent, in conjunction with Master Mechanic, and decided accordingly."

Art 36(a), Firemen's Agreement, effective January 1, 1913.

"When depression in business or any other eause necessitates the reduction of the number of engineers in road service, those .. taken off who have been promoted from the ranks of firemen on the seniority district, may, if they so elect, resume their former standing as firemen, provided they return to firing service in reverse order of their seniority. Those thus returned to firing service will retain all acquired seniority, but must bid for or accept assignment to the higher grades of service in their order of seniority as engineers when opportunity offers or forfeit all seniority as firemen. In case such firemen are not available en account of sickness or are on leave of absence when opportunity to bid for or agcept higher grades 'of service is offered, run as fireman will be bulletined on first

Art. 32. Sec. 5 (a), (b), (c) and (d), Engineers' Agreement, effective December 1, 1912:

(Reads verbatim with provisions next above quoted.)

FIREMEN

ENGINEERS

bulletin date, and upon reporting for duty they must accept such higher service.

Sec. 41 (a), Firemen's Agreement, effective May 11, 1915:

(Reads werbatim with provision next above quoted.)

- Art. 32, Sec. 5 (a), (b) and (d), Engineers' Agreement, effective • 1917:
- "(a) Where there is a surplus of engineers for the business of the district; the oldest engineer in point of seniority shall have the preference for employment.
- (b) When it becomes necessary to reduce the force of engineers in road service on any district, it shall be done by taking off. engineers per engineers' road seniority list of such district, taken in reverse order; engineers thus set back from road service shall be placed on road extra list. When it becomes necessary to reduce the force of engineers on the road extra list, it shall be done by taking off engineers per engineers' road seniority list. of such district, taken in reverse order.
- (d) The cases of engineers who are set back from extra list and left without employment and who may desire to accept temporary employment on other railroads pending opportunity to return to

FIREMEN

ENGINEERS

further service with this Company, such return to be within thirty days' notice, men to lose no seniority by reason of acceptance of such employment, provided no physical disability has been incurred during his absence."

CHICAGO JOINT AGREEMENT

between the

Brotherhood of Locomotive Engineers and

Brotherhood of Locomotive Firemen and Enginemen

May: 17, 1913.

"ARTICLE 11.

sary to reduce the number of engineers on the engineers' working lists, those thus taken off, who have been promoted from the ranks of the firemen on any seniority district, may, if they so elect, displace any fireman their junior on that seniority district, under the following conditions:

First: That no reductions will be made so long as those in pooled or chain-gang freight service are averaging the equivalent of 3,000 miles per month; or, on the road extra list, are averaging the equivalent of 2,200 miles per month; or those on the extra list in switching service are averaging as much as 22 days per month.

Second: That when reductions are made they shall be in reverse order of seniority.

- (b) When hired engineers are laid off on account of reduction in service, they will remain all seniority rights; provided, they return to actual service within 30 days from the date their services are required.
- (c) Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in pooled or chain-gang freight service can earn the equivalent of 3,500 miles, or in extra service the equivalent of 2,600 miles per month.
- (d) Under this rule it is understood that after all engineers who have been taken off have been returned to service as engineers, this rule shall not apply with respect to further additions.
- (e) It shall be the policy of both organizations, when working jointly, to insist upon having a guaranteed monthly wage of not less than \$100 for all extra engineers and not less than \$65 for all extra firemen retained in service; and when a minimum wage is guaranteed no reductions in the force will be insisted upon by either organization.

Note: In making reductions and replacing finemen upon the service lists, the same mileage shall apply as in the case of engineers, except that the rules shall not apply to firemen in switching service.

Mileage regulations set forth in the Chicago Joint Working Agreement, as above quoted, were not incorporated in either the Engineers' Agreement of 1917 or the Firemen's Agreement of May 11, 1915. However, these mileage regulations were later revised by the Chief Executives of the two Enginemen's Organizations, i.e., on May 4, 1918, and were incorporated in the Engineers' Agreement effective October 1, 1918, and the Firemen's Agreement effective December 1, 1918, as follows:

FIREMEN

ENGINEERS

Art. 32, Sec. 5(a), (b); (c), (d); (e), (f) and (g), Engineers: Agreement, effective October, 1, 1918;

engineers for the business of the district, the oldest engineer in point of seniority shall have the preference for employment.

(b) When it becomes necessary. to reduce the force of engineers in road service on any district, it shall be done by taking off engineers per engineers' road seniority list of such district. taken in reverse order: engineers thus set back from road service shall be placed on road extra list. When it becomes necessary to reduce the force of engineers. on the road extra list, it shall he done by taking off engineers' per engineers' road seniority list of such district, taken in . reverse order under the following conditions :

- Sec. 42(a), (b), (c), (d) and (e). Firemen's Agreement, effective December 1, 1918;
- becomes necessary to reduce the mumber of engineers on the engineers working list on any seniority district, those taken off may fireman their junior on that semority district under the following conditions:

First: That no reductions will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000

FIREMEN

miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

Second: That when reductions are made they shall be in reverse order of seniority.

(b) When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services are required.

(e) Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4800 miles per month; in assigned, pooled, chaingang or other regular service pay-

ENGINEERS

That no reductions will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month in assigned, pooled or chain gang freight, or other service paying freight rates, are averaging the equivalent of 3200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

- (d) The cases of engineers who are set back from extra list and left without employment and who may desire to accept temporary employment on other railroads pending opportunity to return to further service with this Company such return to be within thirty days' notice, men to lose no seniority by reason of acceptance of such employment, provided no physical disability has been incurred during his absence.
- (e) Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service ean earn the equivalent of 4800 miles per month; in assigned, pooled, chaingang or other regular service pay-

FIREMEN

ing freight rates, the equivalent of 3800 miles per month, or in extra service the equivalent of 3000 miles per month.

- (d). In the regulation of bassenger or other assigned service, sufficient men will be assigned to keep the mileage or equivalent thereof within the limitation of 4000 and 4800 miles for passenger and 3200 and 3800 miles for other regular service. as provided herein. If, in any. service, additional assignments would reduce earnings below these limits, regulation will be effected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in. other regular service has been reached.
- (e) Under this rule it is understood that after all engineers who have been taken off have been returned to service as engineers, this rule shall not apply with respect to further additions."

Art. 43, Sec. 1, 2, 3 and 4, Firemen's Agreement, effective January 1, 1919:

Read verbation with provisions next above quoted, except that Para. (e) was dropped.)

ENGINEERS

ing freight rates, the equivalent of 3800 miles per month, or in extra service the equivalent of 3000 miles per month.

- (f) In the regulation of: passenger or other assigned service, sufficient men will be assigned to keep the wileage of equivalent thereof within the limitation of 4000 and 4800 miles for passenger and 3200 and 3800 miles for other regular service, as provided herein. If, in any service; additional assignments would reduce earnings below these limits, regulation will be effect. ed by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached.
- (g) Under this rule it is understood that after all engineers who have been taken off have been returned to service as engineers, this rule shall not apply with respect to further additions."

Art. 32, Sec. 5 (b), (c), (c), (f), (g) and (h), Engineers' Agree-

(g) and (h), Engineers' Agreement, effective January 1, 1919;

(Read verbatim with provisions next above quoted.)

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Art. 32, Sec. 5 (b). (c), (c), (f) and (g), Engineers' Agreement, effective December 1, 1919:

(Read verbatim with provisions next above quoted, except that Para. (h) was dropped.)

Art. 43. Sec. 1, 2, 3 and 4, Firemen's Agreement, effective December 29, 1922:

(Read verbatim with provisions next above quoted, excluding former Para. (e).

Art. 43, Sec. 1, 2, 3 and 4, Firemen's Agreement, effective September 1, 1924:

(Read verbatim with provisions next above quoted, excluding former Para. (c).

Art. 43, Sec. 1, 2, 3 and 4, Firemen's Agreement, effective May 1, 1929:

(Read verbatim with provisions next above quoted excluding former Para. (e)

Art. 32; Sec. 5 (b), (c), (e), (f) and (g), Engineers' Agreement, effective December 29, 1922:

(Read verbatim with provisions next above quoted, excluding former Para. (h).

Art. 32, Sec. 5 (b), (c), (c), (f) and (g), Engineers' Agreement, effective September 1, 1924:

(Read verbatim with provisions next above quoted, excluding former Para. (h).

Following is agreement between the Management of the Southern Pacific Company (Pacific Lines) and the Brotherhood of Locomotive Firemen and Enginemen in connection with certain changes in mileage regulation for engineers, then in mediation between the Southern Pacific Company and the

Brotherhood of Locomotive Engineers, our approval thereof being contingent on the assurance that none of the rights accorded the Brotherhood of Locomotive Firemen and Enginemen under said agreement of May 1, 1929, which is still in effect, have been, or will be, abridged, annulled or restricted by the mediation settlement:

"San Francisco, Calif., October 30, 1930.

Mr. Albert Phillips, Vice President, Brotherhood of Locomotive Firemen and Enginemen, 857 Pacific Building, San Francisco, California.

Mr. W. E. Jones, General Chairman. Brotherhood of Locomotive Firemen and Enginemen, 857 Pacific Building, San Francisco, California.

Gentlemen:

As you know we are now in mediation with the Brotherhood of Locomotive Engineers over certain matters growing out of the abrogation of the Chicago Joint Working Agreement. It appears that we shall be able to settle the matters in dispute provided—

- (a) Mileage for extra engineers is regulated between 2600 and 3800 miles per month with a 3100 mile replacement feature, and
- (b) For extra yard engineers the days per month to be regulated between 26 and 35, with a 31 day replacement feature.

Confirming discussion with you gentlemen, it is desired that you agree to incorporating the changes (a) and (b) above mentioned in the Firemen's Agreement of May, 1929, between Southern Pacific Company (Pacific Lines) and the Brotherhood of Locomotive Firemen and Enginemen, same to be effective November 16, 1930. Please advise if you will be agreeable to so doing.

Yours truly,
(Signed) F. L. BURCKHALTER
General Manager
Southern Pacific Company

"San Francisco, Calif., October 30, 1930,

Mr. F. L. Burckhalter, General Manager, Southern Pacific Company, San Francisco, Calif.

Dear Sir:

We have for acknowledgment yours of even date, with regard to mediation with the Brotherhood of Locomotive Engineers, wherein you state—

It appears that we shall be able to settle the matters in dispute provided—

(a) Mileage for extra engineers is regulated between 2600 and 3800 miles per month with a 3100 mile replacement feature, and

(b) For extra yard engineers the days per month to be regulated between 26 and 35, with a 31 day replacement feature.

As stated to you in conference, we are agreeable to incorporating the proposed changes (a) and (b), above quoted, in the Firemen's Agreement of May 1, 1929, same to be effective November, 16, 1930, with understanding from your verbal statements that none of the rights accorded the Brotherhood of Locomotive Firemen and Enginemen under said agreement of May 1, 1929, which is still in effect have been, or will be, abridged, annulled or restricted by the mediation settlement.

Will you kindly advise if our understanding is in conformity with your views?

Yours truly,

(Signed) A. PHILLIPS,

Vice President, B. L. F. & E.

(Signed) W. E. JONES,

General Chairman, B. L. F. & E. Southern Pacific (Pacific Lines)

San Francisco, Calif., October 31, 1930.

Mr. Albert Phillips, Vice President, Brotherhood of Locomotive Firemen and Enginemen, 857 Pacific Building, San Francisco, California.

Mr. W. E. Jones, General Chairman, Brotherhood of Locomotive Frremen and Enginemen, 857 Pacific Building, San Francisco, California.

"Gentlemen:

In reply to yours 30th inst. with regard to proposed mediation settlement with locomotive engineers, would say that your understanding with respect to provisions of Firemen's Agreement of May 1, 1929, is correct, except of course that to carry out the arrangement it will be necessary to revise certain of the rules of the above mentioned Firemen's Agreement so as to provide for the conditions enumerated in Items (a) and (b) of my communication.

Would appreciate your prompt concurrence.
Yours truly,

(Signed) F. L. BURCKHALTER

General Manager

Southern Pacific Company

San Francisco, Calif., October 31, 1930.

Mr. F. L. Burckhalter, General Manager, Southern Pacific Company, San Francisco, Calif.

Dear Sir.

Yours even date with regard to <u>proposed mediation settlement</u> with Locomotive Engineers.

We concur with understanding as outlined."

(Signed) A. PHILLIPS

Vice President, B. L. F. & F.

(Signed) W. E. JONES

General Chairman, B. E. F. & E. Southern Pacific (Pacific Lines)"

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Art. 43, Sec. P. 2; 3 and 4, Firemen's Agreement, effective June 1, 1939:

Sec. 1. When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

First: That no reduction will be made so long as those in

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Art. 32, Sec. 6 (a), (b), (c), (d), (e), (f), (g); (h), (i) and (j), Engineers' Agreement, effective January 9, 1931:

becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

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assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

Second: That when reductions are made they shall be in reverse order of seniority.

- Sec. 2. When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services are required.
- Sec. 3. Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3800 miles per month.

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First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled or chain-gang freight or other service paying freight rates, are averaging the equivalent of 3200 miles per month.

Second: That when reductions are made they shall be in reverse order of seniority.

- (b) When hired engineers are laid off account of reduction in service, they will retain all seniority rights; provided they return to actual service within thirty days from the date their services are required.
- (e) Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3800 miles per month.

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Sec. 4. In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage, or equivalent thereof, within the limitation of 4000 and 4800 miles for passenger and 3200 and 3800 miles for other regular service. as provided herein. "If in any service, additional assignments would reduce earnings below these limits, regulation will be effect. ed by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in . other regular service has been reached.

On road extra lists, sufficient engineers will be maintained to keep the average mileage, or equivalent thereof, between 2600 and 3800 miles per month; provided that when engineers are cut off the working list and it is shown that those on the extra lists are averaging the equivalent of 3100 miles per month, engineers will be returned to the extra lists if the addition will not reduce the average mileage, or the equivalent thereof, below 2600 miles per month.

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- (d) In the regulation of passenger or other assigned service, sufficient engineers will be assigned to keep the mileage or equivalent thereof within the limitations of 4000 and 4800 miles for passenger service and 3200 and 3800 miles for other regular service. as provided herein. If in any service; additional assignments would reduce earnings below these limits, regulation will be effected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached.
- (e) On road extra lists, sufficient engineers will be maintained to keep the average mileage, or equivalent thereof, between 2600 and 3800 miles per month; provided that when engineers are cut off the working lists and it is shown that those on the extra lists are averaging the equivalent of 3100 miles per month, engineers will be returned to the extra lists if the addition will not reduce the average mileage, or the equivalent thereof, below 2600 miles per month.

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Where separate extra lists are maintained for yard service, sufficient engineers will be maintained to keep the average earnings between 26 and 35 days per month; provided that when engineers are cut off the yard working list and it is shown that men are averaging the equivalent of 31 days per month, engineers will be returned to service if the addition will not reduce the average earnings below 26 days per month.

NOTE: As to mileage regulations affecting part-time men, see addendum to Article 43, pages 118-119-120. (Quoted below)

ADDENDUM TO ARTICLE 43: APPLICATION OF MILEAGE REGULATIONS TO PART-TIME MEN.

Excerpts from letter of November 30, 1934, from Mr. Wm. M. Leiserson, Chairman, National Mediation Board, to Mr. A. Johnston, Grand Chief Engineer, Brotherhood of Locomotive Engineers; Mr. D. B. Robertson, President, Brotherhood of Locomotive Firemen and Enginemen; Mr. J. A. Phillips, President, Order of Railway Conductors, and Mr. A. F. Whitney, President, Brotherhood of Railgroad Trainmen, concerning the

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- (f) In assigned yard service, regulation will be made by requiring each regularly assigned man to lay off when he has earned the equivalent of 35 days per month.
- (g) Where separate extra lists are maintained for yard service, sufficient engineers will be maintained to keep the average earnings between 26 and 35 days per month; provided that when engineers are cut off the yard working list and it is shown that men are averaging the equivalent of 31 days per month, engineers will be returned to service if the addition will not reduce the average earnings below 26 days per month.
- (h) When regulating working lists in the respective classes of service, each list will be handled separately. In the regulation of mileage in road service and days in yard service, neither the minimum nor maximum is guaranteed.

When engineers work in both passenger and freight service, passenger miles will be counted as their equivalent in freight miles in carrying out the mileage regulations.

(i) If any engineer in assigned service exceeds his maximum miles or days in any 30 day working period the excess will be charged

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application of mileage regulations to part-time men, the conditions of which were, before the President's Emergency Board of April-May, 1937, accepted by Mr. G. W. Laughlin, First Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers, and Mr. C. V. McLaughlin, Vice President, Brotherhood of Locomotive Firemen and Enginemen, and concurred in by the Carrier, as disposing of Case No. 11 that was pending before that Board:

"We undersand also from your conversation with respect to part-time men, whether they be engineers and firemen or conductors and trainmen, a sound and practical basis for adjustment would be to permit each organization to regulate the conditions of the part-time man during the time that these men are employed at the occupation covered by such organization. Thus if the mileage limitation on any road was 3300 miles for firemen and 3800 miles for engineers, a man in freight service making 1500 miles as a fireman, then used as emergency engineer for 500 miles. would be permitted to make only 1300 additional miles as a fireman; or a man making 2000 miles as an extra engineer who is cut off the engineers' extra board,

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to his mileage or days in his following working period. This shall not apply to engineers who are required to exceed their maximum mileage due to a shortage of engineers.

(j) Under the provisions of the above rules it is understood that after all engineers who have been taken off have been returned to service as engineers, the 3100 mileage replacement for road extra men and the 31 day replacement for yard extra men shall not apply with respect to further additions."

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would be permitted to make only 1300 additional miles as a fireman. On the other hand, a fireman who has made his maximum mileage of 3300 miles and has been taken off on that account, might be used as an emergency engineer or go on the engineers' extra board for the remainder of the month to make the additional 500 miles up to 3800 in accordance with the engineers' mileage limitation."

"We understood from the discussions also that nothing in such a regulation of the part-time men would prevent any organization from regulating the mileage of its . own men by adjustment at the end of each month or checking period, in order to offset any excess mileage that an individual may have made. That is to say, if a trainman had made 400 extra miles as an emergency conductor in any one month or checking period, and if at the end of that month or checking period he was working as a trainman, the trainmen's-organization would have authority to regulate him to bring his mileage within the trainmen's limitation. If, on the other hand, the man was working as a conductor at the end of the month or checking period. he would be subject to the regulation of the conductors' organization. The point, as we understood

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it, was that each organization would be free to make adjustment for excess mileage of the men under its jurisdiction to bring them within the mileage limitations set by that organization. And the fact as to whether a man was subject to the jurisdiction of one organization or another would be established by the craft that he was working in at the end of the month or checking period."

[Endorsed]: Exhibit No. 7. Filed Oct. 10, 1940. Walter B. Maling, Clerk. By Harry L. Fouts, Deputy Clerk.

PLAINTIFF'S EXHIBIT No. 8

EXTRACTS RELATIVE TO REPRESENTA-TION -RULE FROM ENGINEERS' AND FIREMEN'S AGREEMENTS, SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

CHICAGO JOINT AGREEMENT

between the

Brotherhood of Locomotive Engineers

and

Brotherhood of Locomotive Firemen and Enginemen

May 17, 1913

"ARTICLE 7.

(a) The right of any engineer, fireman or hostler to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded."

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Sec. 52 (a), Firemen's Agreement, effective May 11, 1915:

"The right of any engineer or fireman to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of

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Sec. 21 (d), Engineers' Agreement, as amended by the application of the Chicago Award effective May 11, 1915:

The Brotherhood of Locomotive Engineers' Committee will represent all engineers in matters pertaining to rates, rules of seniority and general grievances covered by this

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the General Committee making the schedule involved, is conceded."

Sec. 52 (a), Firemen's Agreement,

effective December 1, 1918:

"The right of any engineer, fireman, or hostler to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded."

Art. 51. Sec. 1, Firemen's Agreement, effective January 1, 1919:

The right of any engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his

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Agreement; except that the right of any engineer to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded.

Sec. 21 (d), Engineers' Agreement, effective October 1, 1918.

(Reads verbatim with provision next above quoted.)

Sec. 21 (e). Engineers' Agreement, effective January 1, 1919:

(Reads verbatim with provision next above quoted.)

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organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded."

Art. 51, Sec. 1, Firemen's Agreement, effective December 29, 1922:

(Reads verbatim with provision next above quoted.)

Art. 51, Sec. 1, Firemen's Agreement, effective September 1, 1924:

(Reads verbatim with provision next above quoted.)

Art. 51, Sec. 1, Firemen's Agreement, effective May 1, 1929:

(Reads verbatim with provision next above quoted.) Art. 32, Sec. 21 (é). Engineers'. Agreement, effective December 29, 1922:

(Reads verbatim with provision next above quoted.)

Art. 32, Sec. 21 (e), Engineers' Agreement, effective September 1, 1924:

Reads verbatim with provision next above quoted.)

Art. 32, Sec. 22, Engineers' Agreement, effective January 9, 1931;

The General Committee of Adjustment, Brotherhood of Locomotive Engineers, will represent all locomotive engineers in the making of contracts, rates, rules, working agreement, and interpretations thereof.

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All controversies affecting locomotive engineers will be handled in accordance with the recognized interpretation of the Engineers' contract as agreed upon between the Committee of the Brotherhood of Locomotive Engineers and the Management.

In matters pertaining to discipline, or other questions not affecting changes in Engineers' contract, the officials of the Company reserve the right to meet any of their employes either individually or collectively."

Art. 51, Sec. 1, Firemen's Agreement, effective June 1, 1939:

(Reads verbatim with provision next above quoted.)

Correspondence between Management of Southern Pacific Company and P. of L. F. & E. with regard to mediation with B. of L. E.

San Francisco, Calif., October 30, 1930.

Mr. Albert Phillips, Vice President, Brotherhood of Locomotive Firemen and Enginemen, 857 Pacific Building, San Francisco, California.

Mr. W. E. Jones, General Chairman, Brotherhood of Locomotive Firemen and Enginemen, 857 Pacific Building, San Francisco, California.

Gentlemen:

As you know we are now in mediation with the Brotherhood of Locomotive Engineers over certain matters growing out of the abrogation of the Chicago Joint Working Agreement. It appears that we shall be able to settle the matters in dispute provided—

- (a) Mileage for extra engineers is regulated between 2600 and 3800 miles per month with a 3100 mile replacement feature, and
- (b) For extra yard engineers the flays per month; x to be regulated between 26 and 35, with a 31 day replacement feature.

Confirming discussion with you gentlemen, it is desired that you agree to incorporating the changes (a) and (b) above mentioned in the Firemen's

Agreement of May, 1929, between Southern Pacific Company (Pacific Lines) and the Brotherhood of Locomotive Firemen and Enginemen, same to be effective November 16, 1930. Please advise if you will be agreeable to so doing.

Yours truly,
(Signed) F. L. BURCKHALTER
General Manager
Southern Pacific Company

San Francisco, Calif., October 30, 1930,

Mr. F. L. Burckhalter, General Manager, Southern Pacific Company, San Francisco, Calif.

Dear Sir:

We have for acknowledgment yours of even date,, with regard to mediation with the Brotherhood of Locomotive Engineers, wherein you state—

'It appears that we shall be able to settle the matters in dispute provided—

- (a) Mileage for extra engineers is regulated between 2600/and 3800 miles per month with a 3100 mile replacement feature, and
- (b) For extra yard engineers the days per month to be regulated between 26 and 35, with a 31 day replacement feature.

As stated to you in conference, we are agreeable to incorporating the proposed changes (a) and (b), above quoted, in the Firemen's Agreement of May 1, 1929, same to be effective November 16, 1930, with understanding from your verbal statements that none of the rights accorded the Brotherhood of Locomotive Firemen and Enginemen under said agreement of May 1, 1929, which is still in effect, have been, or will be, abridged, annulled or restricted by the mediation settlement.

Will you kindly advise if our understanding is in conformity with your views?

Yours truly,

(Signed) A. PHILLIPS

Vice President, B.L.F. & E.

(Signed) W. E. JONES

General Chairman, B.L.F. & E. Southern Pacific (Pacific Lines)

"San Francisco, Calif., October 31, 1930.

Mr. Albert Phillips, Vice President, Brotherhood of Locomotive Firemen and Enginemen, 857 Pacific Building, San Francisco, California.

Mr. W. E. Jones, General Chairman, Brotherhood of Locomotive Firemen and Enginemen, 857 Pacific Building, San Francisco, California.

Gentlemen:

In reply to yours 30th inst., with regard to proposed mediation settlement with locomotive engineers, would say that your understanding with respect to provisions of Firemen's Agreement of May 1, 1929, is correct, except of course that to carry out the arrangement it will be necessary to revise certain of the rules of the above mentioned Firemen's Agreement so as to provide for the conditions enumerated in Items (a) and (b) of my communication 30th.

Would appreciate your prompt concurrence.
Yours truly,

(Signed) F. L. BURCKHALTER

General Manager

Southern Pacific Company

San Francisco, Calif., October 31, 1930.

Mr. F. L. Burckhalter, General Manager, Southern Pacific Company, San Francisco, Calif.

Dear Sir:

Yours even date with regard to proposed mediation settlement with Locomotive Engineers.

We concur with understanding as outlined.

Yours truly,

(Signed) A. PHILLIPS

Vice President, B. L. F. & E.

(Signed) W. E. JONES

General Manager, B. L. F. & E. Southern Pacific (Pacific Lines)"

[Endorsed]: Exhibit No. 8. Filed Oct. 10, 1940. Walter B. Maling, Clerk. By Harry L. Fouts, Deputy Clerk.

PLAINTIFF'S EXHIBIT No. 9A CHICAGO JOINT AGREEMENT

Between: The

Brotherhood of Locomotive Engineers

Brotherhood of Locomotive Firemen and Enginemen May 17, 1913.

ARTICLE 1.

- (a) We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committee of the Brotherhood of Locomotive Engineers, and, conversely, the right to make and interpret contracts, rules, rates and working agreements for locomotive firemen and hostlers, shall be vested in the Brotherhood of Locomotive Firemen and Enginemen; Provided, that on roads where but one organization has representation or maintains a committee, such organization shall have the right to negotiate schedules for all men in engine service.
- (b) Where joint agreements are made in the future the two committees shall endeavor to obtain yard engineers' rate of pay for hostlers required to make main line movements, and when such rate is obtained, these positions shall be filled by engineers as fast as vacancies occur.

(Plaintiff's Exhibit No. 9A continued) ARTICLE 2.

In case of a dispute between the two organizations which the joint committees or officers placed in charge thereof fail to adjust, the matter shall be referred to the two Chief Executives, with a statement of the facts upon which each side base their contentions. The two Executives shall consider and decide the matter in controversy and their decision shall be final. In case the Chief Executives fail to agree the matter shall be submitted to arbitration and the decision of the Arbitrators shall be final. When a decision has been reached as above provided, both organizations shall unite in enforcing such decision.

ARTICLE 3.

The right of an engineer, fireman or hostler to seek membership in either or both of these organizations, in accordance with their respective laws, is conceded: Provided, that members who belong to both organizations shall not be permitted to serve on the local or General Committees of Adjustment, or local or Joint Protective Boards.

ARTICLE 4.

Engineers or firemen in actual service, members of both organizations, shall be required to pay all dues and assessments required of members of each organization.

(Plaintiff's Exhibit No. 9A continued) ARTICLE 5.

- (a) When a member of either of these organizations has been expelled for any cause, except non-payment of dues and assessments, the lodge or division shall notify the other organization of such expulsion together with a statement of the cause.
- (b) A member or an ex-member of either of these organizations shall not be admitted to membership in the other until he is square on the books of the organization to which he has originally belonged.

ARTICLE 6.

In case of a strike involving both organizations each man shall receive benefits from the organization having jurisdiction of the class of service in which he is engaged; the engineers from the Brotherhood of Locomotive Engineers, and the firemen and hostlers from the Brotherhood of Locomotive Firemen and Enginemen, under their respective laws. No man shall receive strike benefits from both organizations.

ARTICLE 7.

(a) The right of any engineer, fireman or hostler to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded.

- (b) In case either organization shall make an issue and declare a strike independent of the other organization, whether there is a joint working agreement or not between the Committees, the organization making the issue will not order a strike of its members who are working under an agreement made by the other organization, and it shall be understood that should the Brotherhood of Locomotive Engineers order a strike it will not require its members who are firing to quit their positions as firemen, and if the Brotherhood of Locomotive Firemen and Enginemen shall order a strike it will not require its members, who are running engines, to quit their positions as engineers.
- (c) When a strike is called by one organization the members of the other organization shall not perform any service that was being performed, before the strike was called, by the members of the organization who are on strike.
- (d) When a member of either organization has a grievance which the local committee of his organization is unable to adjust with the local officers of the company, the matter shall be referred to the two General Chairmen who shall unite and work jointly in handling such grievance to its final conclusion.
- (c) In case of any dispute between the two organizations that is finally decided in favor of either organization, as against the contentions of the other, or in case any General Chairman or General Committee fails or refuses to act jointly with the General

eral Chairman or General Committee of the other organization, the organization in whose favor the decision is made shall not be limited in its power to enforce the decision made in its favor by the limitations of paragraph (b) hereof.

ARTICLE 8.

When any grievance has been handled by a committee of one organization, except jointly as herein provided, it shall not thereafter be handled by the committee of the other organization.

ARTICLE 9.

The principle of joint schedules for engineers, firemen and hostlers is affirmed and it is the recommendation of this Committee that joint meetings of the General Committees on every system of railroad be arranged for in future schedule negotiations. The policy of joint action herein subscribed to shall also apply to concerted wage movements.

ARTICLE 10.

- (a) Firemen shall rank on the firemen's roster from the date of their first service as firemen when called for such service, and when qualified shall be promoted to positions as engineers in accordance with the following rules:
- (b) Firemen shall be examined for promotion according to seniority on the Firemen's roster; and

those passing the required examination shall be given certificates of qualification, and when promoted shall hold their same relative standing in the service to which assigned.

- (c) If for any reason the senior eligible firemen are not available and a junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used establishes shall go to the credit of the senior eligible fireman. As soon as the senior fireman is available he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman been available and the junior fireman not used.
- (d) As soon as a fireman is promoted he will be notified in writing by the proper official of the company of the date of his promotion, and unless he file a written protest within sixty days against such date he cannot thereafter have it changed. When a date of promotion has been established in accordance with regulations, such date shall be posted and if not challenged in writing within sixty days after such posting, no protest against such date shall afterwards be heard.
- (e) No fireman shall be deprived of his rights to examination nor to promotion in accordance with his relative standing on the firemen's roster, because of any failure to take his examination by reason of the requirements of the company's service, by sickness, or by other proper leave of absence, provided: That upon his return he shall be immediately called and

(Plaintiff's Exhibit No. 9A continued) required to take examination and accept proper assignment.

- (f) The posting of notice of seniority rank, as per section (d) shall be done within ten days following date of promotion and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank.
- (g) Firemen baving successfully passed the qualifying examination shall be eligible as engineers. Promotion and the establishment of a seniority date as engineer, as provided herein, shall date from the first service as engineer, when called for such service.

Note: On roads where promotion is to road service only, promotion and establishment of seniority date as road engineer will obtain.

(h) The seniority date of a hired engineer shalf be the date of his first service as engineer.

ARTICLE 11.

(a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working lists, those thus taken off, who have been promoted from the ranks of the firemen on any seniority district, may, if they so elect, displace any fireman their junior on that seniority district, under the following conditions:

First: That no reductions will be made, so long as those in pooled or chain-gang freight service are (Plaintiff's Exhibit No. 9A continued) averaging the equivalent of 3,000 miles per month; or, on the read extra list, are averaging the equivalent of 2,200 miles per month, or those on the extra list in switching service are averaging as much as 22 days per month.

Second: That when reductions are made, they shall be in reverse order of seniority.

- (b) When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services are required.
- (c) Engineers taken off under this rule shall be returned to service as engineers, in the order of their seniority as engineers, and as soon as it can be shown that engineers in pooled or chain-gang freight service can earn the equivalent of 3,500 miles, or in extra service the equivalent of 2,600 miles per month.
- engineers who have been taken off have been returned to service as engineers this rule shall not apply with respect to further additions.
- (e) It shall be the policy of both organizations, when working jointly, to insist upon having a guaranteed monthly wage of not less than \$100 for all extra engineers and not less than \$65 for all extra firemen retained in service, and when a minimum wage is guaranteed no reductions in the force will be insisted upon by either organization.

Note: In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers, except that the rules shall not apply to firemen in switching service.

ARTICLE 12.

(Proposed joint working agreement for the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Engineemen):

- (a) For the purpose of securing better wages and better working conditions and affording protection to their members, it is hereby agreed that the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen on the railroad will work jointly.
- (b) When the committees have been convened jointly they shall first proceed to the election of a Chairman, Vice Chairman and Secretary from among their members. If the Chairman is elected from one organization, the Vice Chairman and Secretary shall be elected from the other. The duties of the Chairman shall be to preside at the meetings of the joint committee and in his absence the Vice Chairman shall preside.
- . (c) The powers and duties of the Chairman or Vice Chairman shall be purely parliamentary, and they shall hold office only for the session for which elected. The two General Chairmen shall conduct

(Plaintiff's Exhibit No. 9A continued)
the hearings with the officials of the Company, and
shall have charge of the committee when not in joint
session, sharing equally in this work.

- (d) It shall be the duty of the secretary to keep a true and correct record of the proceedings, which shall be read each day, and at the close of the session, for which he was elected, he shall furnish each committee with a copy thereof.
- (e) Having elected officers as above, the two committees shall meet jointly and deliberate upon all questions that may be presented in accordance with and subject to the laws of the respective organizations.
 - (f) All questions may be disposed of by a majority vote of the whole but either side may, by a majority vote of its members, demand an organization vote, in which case each organization shall have but one vote regardless of its numerical strength. In case of a deadlock due to one organization voting against the other, the matter may be further considered, and should neither side recede from their position, the Chairman, acting in conjunction with the Vice Chairman, shall appoint a conference committee, composed of an equal number of members (not to exceed three from each organization to consider and propose a solution of the question.
 - (g) After the committees in joint session have impleted the draft of a proposition to be submitted to the company, it shall then be approved by

(Plaintiff's Exhibit No. 9A continued) an organization vote. Should it fail to receive the necessary approval, the Chairman will appoint a conference committee, which will make modifica-

conference committee, which will make modifica-

(h) When committees have arranged to work jointly, neither Chairman or Committee will be permitted to go to the office of the railroad, with which they are negotiating, without the other Chairman or Committee; and neither committee shall effect a settlement of the matters in negotiation without the knowledge and consent of the other.

- (i) In accordance with the Chicago Agreement, neither General Chairman shall take up a case of any kind without the assistance of the other, but this does not necessarily mean that both Chairmen shall be present at every conference on the different cases, it being understood that either Chairman has the right to designate his Vice Chairman or the Chairman of the other organization to represent him. This is not intended to permit the Chairmen to work independently of each other, but is for the purpose of expediting the work and to reduce the expense, it being expressly understood that both Chairmen shall be present when any case of importance is to be adjusted:
- (i) In case of voting to make an issue the committees of each organization shall vote on the question in accordance with their respective laws, and shall immediately communicate the results of the vote to the committee of the other organization. If

(Plaintif's Exhibit No. 9A continued) the Committee of either organization shall fail to vote in favor of making an issue, the other organization shall not be barred from making an issue alone.

- (k) When a vote of the membership is taken, each organization will poll its members in accordance with its own laws, on a ballot with a blank space for the members to indicate the service they are performing.
- (1) When the result of the vote is known, each organization will communicate the result to the other; and, should either organization fail to give the necessary strike vote, the other shall not be barred from making the issue in accordance with its own laws.
- (m) When the two committees have formed a joint committee they shall thereafter work jointly, electing a Chairman, a Vice Chairman and Secretary at each session (this not to apply in case of a recess), and will not cease to work jointly by reason of any disagreement or deadlock until the question has first been submitted to the Chief Executives, as provided in the Chicago Agreement, and their decision rendered thereon.
- (n) These rules may be modified or amended by a two-thirds vote of the members of the joint committee in order to meet local conditions, and subject to the approval of the two Chief Executives.

ARTICLE 13.

(a) Where jurisdiction over hostlers is transferred to the Brotherhood of Locomotive Firemen and Enginemen, and where jurisdiction over men running switch engines is transferred to the Brotherhood of Locomotive Engineers, the rights that have been acquired and practices new in effect for the men under the jurisdiction of the organization from which jurisdiction is transferred shall be preserved by the organization to which jurisdiction is transferred.

(b) It being further understood that "fixtures" in yard service shall not be displaced by road engineers during periods of business depression.

ARTICLE 14.

Laws of either organization which interfere in any manner with the proper execution of this agreement shall be so amended as to avoid confliction therewith.

ARTICLE 15.

This agreement shall not be amended, revised or annulled, until after thirty days written notice has been served by order of the Convention of either organization.

RECOMMENDATION:

That it is the sense of this study that this agreement be not made public until after it has been presented to the next Convention of the Brotherhood (Plaintiff's Exhibit No. 9A continued) of Locomotive Firemen and Enginemen, to be held in Washington, D. C., in June, 1913.

Resolution:

It shall be the policy of both organizations, acting through their General Committees on each railroad, to open negotiations with the proper officials of such railroad for the purpose of securing their cooperation in placing in effect the rates of wages and rules of employment agreed to herein; provided, that provisions of notice in existing schedules and laws of both organizations will be observed in reopening schedules to accomplish this purpose.

Date Effective:

This joint working agreement between the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen, if ratified by the Twenty-sixth Convention of the Brotherhood of Locomotive Firemen and Enginemen, shall become effective July 1, 1913.

Agreed to for the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS:

W. S. STONE, G. C. E.

M. W. CADLE, Asst. G. C. E.

M. E. MONTGOMERY, Asst. G. C. E.

J. G. BYWATER, Committee

T. J. HOSKINS, Committee

JOHN MEEKS, Committee,

M. J. FLANNERY, Committee

Agreed to for the

BROTHERHOOD OF LOCOMOTIVE EIRE-MEN AND ENGINEMEN:

W. S. CARTER.

President.

TIMOTHY SHEA,

Asst. Pres.

E. A. BALL,

1st Vice Pres.

A. DILLON,

2nd Vice Pres.

A. PHILLIPS,

3rd Vice Pres.

C. V. McLAUGHLIN,

4th Vice Pres.

P. J. McNAMARA,.

5th Vice Pres.

WALTER D. MOORE,

C. J. GOFF, "

H. M. WALKER,

D. W. SMITH,

I. C. CLARK,

F. W. LEWIS,

O. D. HOPKINS,

A. I. KAUFFMAN,

O. W. KARN,

D. B. ROBERTSON,

S. A. BOONE.

[Endorsed]: No. 21301. Exhibit No. 9A. Filed Oct. 10, 1940: Walter B. Maling, Clerk. By Harry L. Fouts, Deputy Clerk.

PLAINTIFF'S EXHIBIT No. 9-B

CHICAGO JOINT AGREEMENT

Between the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen

May 17, 1913

Revised at Cleveland May 4, 1918

AGREEMENT

Between the B. of L. E. and B. of L. F. & E.

ARTICLE I

(a) We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committee of the Brotherhood of Locomotive Engineers, and, conversely, the right to make and interpret contracts, rules, rates and working agreements for locomotive firemen and hostlers, shall be vested in the Brotherhood of Locomotive Firemen and Enginemen; provided, That on roads where but one organization has representation or

maintains a committee, such organization shall have the right to negotiate schedules for all men in engine service.

(b) Where joint agreements are made in the future the two committees shall endeavor to obtain yard engineers rate of pay for hostlers required to make main line movements, and when such rate is obtained these positions shall be filled by engineers as fast as vacancies occur.

ARTICLE II.

In case of a dispute between the two organizations which the joint committees or officers placed in charge thereof, fail to adjust, the matter shall be referred to the two Chief Executives, with a statement of the facts upon which each side base their contentions. The two Chief* Executives shall consider and decide the matter in controversy, and their decision shall be final. In case the Chief Executives fail to agree the matter shall be submitted to arbitration and the decision of the arbitrators shall be final. When a decision has been reached, as above provided, both organizations shall unite in enforcing such decision.

ARTICLE HE.

The right of an engineer, fireman or hostler to seek membership in either or both of these organi-

^{*}Italies were used in original agreement.

zations, in accordance with their respective laws, is conceded: Provided, That members who belongs to both organizations shall not be permitted to serve on the local or General Committees of Adjustment, or local or General Grievance Committees.

ARTICLE IV

Engineers or firemen in actual service, members of both organizations, shall be required to pay all dues and assessments required of members of each organization.

ARTICLE V.

- (a) When a member of either of these organizations has been expelled for any cause, except non-payment of dues and assessments, the lodge or division shall notify the other organization of such expulsion together with a statement of the cause.
- (b) A member or an ex-member of either of these organizations shall not be admitted to membership in the other until he is square on the books of the organization to which he has originally belonged: Provided, a member or ex-member shall not be considered in arrears unless he has made written application to proper officers of division or lodge to be carried, and same has been favorably acted upon and recorded in finitutes of meeting.

ARTICLE VI

In case of a strike involving both organizations, each man shall receive benefits from the organiza-

tion having jurisdiction of the class of service in; which he is engaged; the engineers from the Brotherhood of Locomotive Engineers, and the firemen and hostlers from the Brotherhood of Locomotive Firemen and Enginemen, under their respective laws. No man shall receive strike benefits from both organizations.

ARTICLE VII

- (a) The right of any engineer, fireman, or hostler to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule involved, is conceded.
- (b) When a member of either organization has a grievance which the local committee of his organization is unable to adjust with the local officers of the company, the matter shall be referred to the two General Chairmen, who shall unite and work jointly in handling such grievance to its final conclusion.
- (c) Neither General Chairman shall take up a case of any kind without the assistance of the other, but this does not necessarily mean that both General Chairmen shall be present at every conference on the different cases, it being understood that either Chairman has the right to designate his Vice-Chairman or the Chairman of the other organization to

represent him. This is not intended to permit the Chairmen to work independently of each other, but is for the purpose of expediting the work and to reduce the expense, it being expressly understood that both Chairmen shall be present when any case of importance is to be adjusted.

- (d) In case either organization shall make an issue and declare a strike independent of the other organization, whether there is a joint working agreement or not between the committees, the organization making the issue will not order a strike of its members who are working under an agreement made by the other organization, and it shall be understood that should the Brotherhood of Locomotive Engineers order a strike, it will not require its members who are firing, to quit their positions as firemen, and if the Brotherhood of Locomotive Firemen and Enginemen shall order a strike, it will not require its members, who are running engines; to quit their positions as engineers.
- (e) When a strike is called by one organization the members of the other organization shall not perform any service that was being performed, before the strike was called, by the members of the organization who are on strike.
- (f) In case of any dispute between the two organizations that is finally decided in favor of either organization, as against the contentions of the other, or in case any General Chairman or General Committee fails or refuses to act jointly with the General

eral Chairman or General Committee of the other organization, the organization in whose favor the decision is made shall not be limited in its power to enforce the decision made in its favor by the limitations of paragraph (d) hereof.

ARTICLE VIII

When any grievance has been handled by a committee of one organization, except jointly as herein provided, it shall not thereafter be handled by the committee of the other organization.

ARTICLE IX

The principle of joint schedules for engineers, firemen and hostlers is affirmed, and it is the recommendation of this Committee that joint meetings of the General Committees on every system of railroad be arranged for in future schedule negotiations. The policy of joint action herein subscribed to shall also apply to concerted wage movements.

ARTICLE X

- (a) Firemen shall rank on the firemen's roster from the date of their first service as firemen when called for such service, except as provided in Section (k), and when qualified shall be promoted to positions as engineers in accordance with the following rules:
- (b) Firemen shall be examined for promotion according to seniority on the Firemen's roster, and those passing the required examination shall be

(Plaintiff's Exhibit 9-B continued)
given certificates of qualification, and when promoted shall hold their same relative standing in the
service to which assigned.

(c) If for any reason the senior eligible fireman or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used establishes shall go to the credit of the senior eligible fireman or engineer to be hired, provided the engineer to be hired is available and qualifies within thirty days. As soon as the senior fireman or engineer to be hired is available, as provided herein, he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman to be promoted or engineer to be hired been available and the junior fireman not used.

Note—Qualification, as referred to herein, is not intended to include learning of road or signals.

- (d) As soon as a fireman is promoted he will be notified in writing by the proper official of the company of the date of his promotion, and unless he file a written protest within sixty days against such date he cannot thereafter have it changed. When a date of promotion has been established in accordance with regulations, such date shall be posted and if not challenged in writing within sixty days after such posting, no protest against such date shall afterwards be heard.
- (e) No fireman shall be deprived of his rights to examination, nor to promotion in accordance with

his relative standing on the firemen's roster, because of any failure to take his examination by reason of the requirements of the company's service, by sickness, or by other proper leave of absence; Provided, That upon his return he shall be immediately called and required to take examination and accept proper assignment,

- (f) The posting of notice of seniority rank, as per section (d), shall be done within ten days following date of promotion and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank.
- (g) Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of sevicity as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineers' extra list or holding a regular assignment as engineer on such seniority district.

Note—On roads where promotion is to road service only, promotion and establishment of seniority date as road engineer will obtain.

(h) On a seniority district where firemen are required to fire less than three years, all engineers will be hired:

If required to fire 3 and less than 4 years, 1 promoted and 1 hired;

If required to fire 4 and less than 5 years, 2 promoted to 1 hired;

If required to fire 5 and less than 6 years, 3 promoted to 4 hired;

If required to fire 6 and less than 7 years, 4 promoted to 1 hired;

If required to fire 7 and less than 8 years, 5 promoted to 1 hired;

On seniority districts where firemen are required to fire eight years or more, all engineers will be promoted.

The foregoing will not prevent committees from having discharged engineers re-employed or reinstated on their former seniority districts at any time.

- (i) If the engineer to be hired is not available when needed and the senior qualified fireman is promoted, the date of seniority thus established shall fix the standing of the hired engineer, who, if available and qualified within thirty days from date senior qualified fireman is promoted, will rank immediately ahead of the promoted fireman. The promoted fireman will retain his date of seniority as engineer and will be counted in proportion of promotions.
- (j) In case an engineer is hired and used in actual service when, under requirements of section (h), a fireman (or firemen) should have been promoted, the date of seniority thus established shall fix the

standing of the senior qualified fireman (or firemen) due to be promoted, providing he or they are eligible and qualify within thirty days, who shall rank immediately ahead of the hired engineer on the engineers' seniority list. The hired engineer will retain his date of seniority and be counted in proportion of engineers to be hired.

(k) The seniority date of the hired engineer shall be the date of his first service as engineer, except as provided in Sections (e), (i) and (j) of this Article. It is further provided that engineers hired, or permanently transferred from one seniority district to another on any railroad, shall be given a date of seniority as fireman corresponding with their date as engineer.

ARTICLE XI

(a) When; from any cause, it becomes necessary to reduce the number of engineers on the engineers' working lists on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

First: That no reductions will be made so long as those in assigned or extra passenger service are carning the equivalent of 1000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

Second: That when reductions are made they shall be in reverse order of seniority.

- (b) When hired engineers are laid off on account of reduction in service, they will retain all seniority rights: Provided, they return to actual service within 30 days from the date their services are required. This rule also applies to firemen.
- (c) Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4800 miles per month; in assigned, pooled, chain-gang ar other regular service paying freight rates, the equivalent of 3800 miles per month, or in extra service the equivalent of 3000 miles per month.
- (d) In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage or equivalent thereof within the limitations of 4000 and 4800 miles for passenger and 3200 and 3800 miles for other regular service, as provided herein. If, in any service, additional assignments would reduce earnings below these limits, regulation will be effected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached.
- (e) Under this rule it is understood that after all engineers who have been taken off have been returned to service as engineers, this rule shall not apply with respect to further additions.

(f) It shall be the policy of both organizations, when working jointly, to insist upon having a guaranteed monthly wage of not less than 25 days for all extra engineers and extra firemen retained in service, and when this is guaranteed no reductions in the force will be insisted upon by either organization.

Note—In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers.

ARTICLE XII.

(Proposed joint working agreement for the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen;).

- (a) For the purpose of securing better wages and better working conditions, and affording protection to their members, it is hereby agreed that the Brother-hood of Locomotive Engineers and the Brother-hood of Locomotive Firemen and Enginemen on the ______railroad will work jointly.
- (b) When the committees have been convened jointly they shall first proceed to the election of a Chairman, Vice-Chairman and Secretary from among their members. If the Chairman is elected from one organization, the Vice-Chairman and Secretary shall be elected from the other. The duties of the Chairman shall be to preside at the meetings of the joint committee and in his absence the Vice-Chairman shall preside.

- (c) The powers and duties of the Chairman or Vice-Chairman shall be purely parliamentary, and they shall hold office only for the session for which elected. The two General Chairmen shall conduct the hearings with the officials of the company, and shall have charge of the committee when not in joint session, sharing equally in this work.
- (d) It shall be the duty of the Secretary to keep a true and correct record of the proceedings, which shall be read each day, and at the close of the session for which he was elected he shall furnish each committee with a copy thereof.
 - (e) Having elected officers as above, the two committees shall meet jointly and deliberate upon all questions that may be presented in accordance with and subject to the laws of the respective organizations.
 - (f) All questions may be disposed of by a majority vote of the members in the committee of the whole, but either side may, by a majority vote of its members, demand an organization vote, in which case each organization shall have but one vote, regardless of its numerical strength. In case of a deadlock due to one organization voting against the other, the matter may be further considered, and should neither side recede from their position, the Chairman, acting in conjunction with the Vice-Chairman, shall appoint a conference committee, composed of an equal number of members (not to exceed three) from each organization to consider and propose a solution of the question.

- (g) After the committees in joint session have completed the draft of a proposition to be submitted to the company, it shall then be approved by an organization vote. Should it fail to receive the necessary approval, the Chairman will appoint a conference committee, which will make modifications in accordance with the views of its members.
- (h). When committees have arranged to work jointly neither Chairman nor committee will be permitted to go to the office of the railroad, with which they are negotiating, without the other Chairman or committee; and neither committee shall affect a settlement of the matters in negotiation without the knowledge and consent of the other, it being understood that either Chairman has the right to designate his Vice-Chairman or the chairman of the other organization to represent him.
- (i) In case of voting to make an issue the committees of each organization shall vote on the question in accordance with their respective laws, and shall immediately communicate the results of the vote to the committee of the other organization. If the committee of either organization shall fail to vote in favor of making an issue, the other organization shall not be barred from making an issue alone.
- (j) When a vote of the membership is taken, each organization will poll its members in accordance with its own laws, on a ballot with a blank space for the members to indicate the service they are performing.

- (k) When the result of the vote is known each organization will communicate the result to the other, and, should either organization fail to give the necessary strike vote, the other shall not be barred from making the issue in accordance with its own laws.
- (1) When the two committees have formed a joint committee they shall thereafter work jointly, electing a Chairman, a Vice-Chairman and Secretary at each session (this not to apply in case of a recess), and will not cease to work jointly by reason of any disagreement or deadlock until the question has first been submitted to the Chief Executives, as provided in the Chieago agreement, and their decision rendered thereon.
- (m) These rules may be modified or amended by a two-thirds vote of the members of the joint committee in order to meet local conditions, and subject to the approval of the two Chief Executives.

ARTICLE XIII

(a) Where jurisdiction over hostlers is transferred to the Brotherhood of Locomotive Firemen and Enginemen, and where jurisdiction over men running switch engines is transferred to the Brotherhood of Locomotive Engineers, the rights that have been acquired and practices now in effect for the man under the jurisdiction of the organization from which jurisdiction is transferred, shall be preserved by the organization to which jurisdiction is transferred.

(b) It being further understood that "fixtures" in yard service shall not be displaced by road engmeers during periods of business depression.

ARTICLE XIV

Laws of either organization which interfere in any manner with the proper execution of this agreement shall be so amended as to avoid confliction therewith.

ARTICLE XV

This agreement shall not be amended, revised or annulled, until after thirty days' written notice has been served by order of the Convention of either organization.

RESOLUTION

It shall be the policy of both organizations; acting through their General Committees on each railroad, to open negotiations with the proper officials of such railroad for the purpose of securing their co-operation in placing in effect the rates of wages and rules of employment agreed to herein; Provided, That provisions of notice in existing schedules and laws of both organizations will be observed in re-opening schedules to accomplish this purpose.

(Plaintiff's Exhibit 9-B continued) Effective As Revised May 4, 1918

For the Brotherhood of Locomotive Engineers.

W. S. STONE,

Grand Chief Engineer.

M. W. CADLE,

Asst. G. C. E.

M. E. MONTGOMERY

Asst. G. C. E.

A. JOHNSTON

F. S. EVANS

C. D. JOHNSON

For the Brotherhood of Locomotive Firemen and Enginemen.

TIMOTHY SHEA,

Acting President.

A. PHILLIPS,

Vice-President.

C. V. McLAUGHLIN,

Vice-President.

O. D. HOPKINS

T. M. SPOONER

I. C. CLARK

[Endorsed]: Exhibit No. 9B. Filed Oct. 10, 1940. Walter B. Maling, Clerk. By Harry L. Fouts. Deputy.Clerk.

PLAINTIFF'S EXHIBIT No. 9-C

CHICAGO JOINT AGREEMENT

Between the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen.

May 17, 1913

Revised at Cleveland May 4, 1918 May 1, 1923

AGREEMENT

Between the B. of L. E. and B. of L. F. & E.

ARTICLE I

(a) We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committee of the Brotherhood of Locomotive Engineers, and, conversely, the right to make and interpret contracts, rules, rates and working agreements for locomotive firemen and hostlers, shall be vested in the Brotherhood of Locomotive Firemen and Enginemen; provided, That on roads where but one organization has representation or maintains a committee, such organization shall have

- (Plaintiff's Exhibit No. 9-C continued) the right to negotiate schedules for all men in engine service.
- (b) Where joint agreements are made in the future the two committees shall endeavor to obtain yard engineers' rate of pay for hostlers required to make main line movements, and when such rate is obtained these positions shall be filled by engineers as fast as vacancies occur.

ARTICLE II

In case of a dispute between the two organizations which the joint committees or officers placed in charge thereof, fail to adjust, the matter shall be referred to the two Chief Executives, with a statement of the facts upon which each side base their contentions. The two Chief Executives shall consider and decide the matter in controversy, and their decision shall be final. In case the Chief Executives fail to agree the matter shall be submitted to arbitration and the decision of the arbitrators shall be final. When a decision has been reached, as above provided, both organizations shall unite in enforcing such decision.

ARTICLE III

The right of an engineer, fireman or hostler to seek membership in either or both of these organizations, in accordance with their respective laws, is conceded: Provided, That members who belong to both organizations shall not be permitted to serve

(Plaintiff's Exhibit No. 9-C continued) on the local or General Committees of Adjustment, or local or General Grievance Committees.

ARTICLE IV

Engineers or firemen in actual service, members of south organizations, shall be required to pay all dues and assessments required of members of each organization.

ARTICLE V

- (a) When a member of either of these organizations has been expelled for any cause, except nonpayment of dues and assessments, the lodge or division shall notify the other organization of such expulsion together with a statement of the cause.
- (b) A member or an ex-member of either of these organizations shall not be admitted to membership in the other until he is square on the books of the organization to which he has originally belonged: Provided, a member or ex-member shall not be considered in arrears unless he has made written application to proper officers of division or lodge to be carried, and same has been favorably acted upon and recorded in minutes of meeting.

ARTICLE VI

In case of a strike involving both organizations, each man shall receive benefits from the organization having jurisdiction of the class of service in which he is engaged; the engineers from the Brotherhood of Locomotive Engineers, and the fire-

(Plaintiff's Exhibit No. 9-C continued)
men and hostlers from the Brotherhood of Locomotive Firemen and Enginemen, under their respective laws. No man shall receive strike benefits
from both organizations.

ARTICLE VII

- (a) The right of any engineer, fireman or hostler to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule involved, is conceded:
- (b) When a member of either organization has a grievance which the local committee of his organization is unable to adjust with the local officers of the company, the matter shall be referred to the two General Chairmen, who shall unite and work jointly in handling such grievance to its final conclusion.
- (c) Neither General Chairman shall take up a case of any kind without the assistance of the other, but this does not necessarily mean that both General Chairmen shall be present at every conference on the different cases, it being understood that either Chairman has the right to designate his Vice-Chairman or the Chairman of the other organization to represent him. This is not intended to permit the Chairmen to work independently of each other, but it is for the purpose of expediting the work and to reduce the expense, it being expressly understood

(Plaintiff's Exhibit No. 9-C continued) that both-Chairmen shall be present when any case of importance is to be adjusted.

- (d) In case either organization shall make an issue and declare a strike independent of the other organization, whether there is a joint working agreement or not between the committees, the organization making the issue will not order a strike of its members who are working under an agreement made by the other organization, and it shall be understood that should the Brotherhood of Locomotive Engineers order a strike, it will not require its members who are firing, to quit their positions as firemen, and if the Brotherhood of Locomotive Firemen and Enginemen shall order a strike, it will not require its members, who are running engines, to quit their positions as engineers.
- (e) When a strike is called by one organization the members of the other organization shall not perform any service that was being performed, before the strike was called, by the members of the organization who are on strike.
- organizations that is finally decided in favor of either organization, as against the contentions of the other, or in case any General Chairman or General Committee fails or refuses to act jointly with the General Chairman or General Committee of the other organization, the organization in whose favor the decision is made shall not be limited in its power to enforce the decision made in its favor by the limitations of paragraph (d) hereof:

(Plaintiff's Exhibit No. 9-C continued) ARTICLE VIII

When any grievance has been handled by a committee of one organization, except jointly as herein provided, it shall not thereafter be handled by the committee of the other organization.

ARTICLE IX

The principle of joint schedules for engineers, firemen and hostlers is affirmed, and it is the recommendation of this Committee that joint meetings of the General Committees on every system of railroad be arranged for in future schedule negotiations. The policy of joint action herein subscribed to shall also apply to concerted wage movements.

ARTICLE X

- (a) Firemen shall rank on the firemen's roster from the date of their first service as firemen when called for such service, except as provided in Section (k), and when qualified shall be promoted to positions as engineers in accordance with the following rules:
- (b) Firemen shall be examined for promotion according to seniority on the Firemen's roster, and those passing the required examination shall be given certificates of qualification, and when promoted shall hold their same relative standing in the service to which assigned.
- or engineer to be hired is not available and junior.

(Plaintiff's Exhibit No. 9-C continued) qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman so used establishes shall go to the credit of senior eligible fireman or engineer to be hired, provided the engineer to be hired is available and qualifies within thirty days. As soon as the senior fireman or engineer to be hired is available, as provided herein, he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman to be promoted or engineer to be hired been available and the junior fireman not used.

Note—Qualification, as referred to herein, is not intended to include learning of road or signals.

- (d) As soon as a fireman is promoted he will be notified in writing by the proper official of the company of the date of his promotion, and unless he files a written protest within sixty days against such date he cannot thereafter have it changed. When the date of promotion of a fireman or the date of a hired engineer, or fireman has been established in accordance with regulations, such date shall be posted and if not challenged in writing within sixty days after such posting, no protest against such date shall afterwards be heard.
- (e) No fireman shall be deprived of his rights to examination, nor to promotion in accordance with his relative standing on the firemen's roster because of any failure to take his examination by reason of the requirements of the company's service, by sick-

(Plaintiff's Exhibit No. 9-C continued) ness, or by other proper leave of absence: Pro-

vided, That upon his return he shall be immediately called and required to take examination and accept

proper assignment.

The posting of notice of seniority rank, as per section (d), shall be done within ten days fal-, lowing date of promotion and such notice shall be posted on every bulletin board of the seniority district on which the man holds rank.

(g-1) Firemen having successfully passed qualifying examination shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called forsuch service, provided there are no denoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority. district while a junior engineer is working on the engineers' extra fist or holding a regular assignment as engineer on such seniority district.

Note—On roads where promotion is to road *115 ice only, promotion and establishment of seniority date as road engineer will obtain.

(g.2) Firemen having successfully passed qualifying examinations shall be eligible as engineers. Promotion and the establishment of a date of seniority as engineer, as provided herein, shall date from the first service as engineer, when called for such service, provided there are no demoted, engineers back firing. No demoted engineer will be permitted

(Plainti e's Exhibit No. 9-C continued)

to hold a run as fireman out of any terminal on a seniority district while a junior engineer is working on the engineers' extra list, or holding an assignment as engineer out of such terminal; it being understood that an engineer cut off the engineers' extra list at any terminal on a seniority district may displace any engineer his junior on that seniority district; it being further understood that engineers will be required to fill all positions of engineers on any seniority district before firemen are promoted, or engineers hired on that seniority district.

Note On any seniority district where a division of the B. of L. E. and a lodge of the B. of L. F. d E. desire to put paragraph (g-2) in effect, a referendum vote of the members of all divisions and ladges on that seniority district, must be taken, and the expense of taking the vote must be borne by each division and lodge for voting their members. If a majority of the members of each organization vote in favor of putting Paragraph (g-2) in effect, they will notify the general chairmen, who will put Paragraph (g-2) in effect on that seniority district. When Paragraph (9-2) is adopted on a seniority district of a railroad system, it will remain in effect antil a majority of the members of either organizas tion on that seniority district decide through a refcreadam vote, and thirty days' notice has been served, on the other organization, to discontinue the rule. After a referendum vote has been taken to (Plaintiff's Exhibit No. 9-C continued)
discontinue the rule, such thirty days' notice will be
served in writing by the general chairman of the
organization desiring the change upon the general
chairman of the other organization. Upon the expiration of such thirty days' notice, or, in case of
failure to secure a majority vote by either organization for the adoption of Paragraph (g-2) it is
understood that Paragraph (g-1) is in effect.

(h) On a seniority district where firemen are required to fire less than three years, all engineers will be hired:

If required to fire 3 and less than 4 years, 1 promoted and 1 hired;

If required to fire 4 and less than 5 years, 2 promoted to 1 hired;

If required to fire 5 and less than 6 years, 3 promoted to 1 hired;

If required to fire 6 and less than 7 years, 4 promoted to 1 hired;

. If required to five 7 and less than 8 years, 5 promoted to 1 bired.

On seniority districts where firemen are required to fire eight years or more, all engineers will be promoted.

The foregoing will not prevent committees from having discharged engineers re-employed or reinstated on their former seniority districts at any time.

(i) If the engineer to be hired is not available when needed and the senior qualified fireman is pro-

(Plaintiff's Exhibit No. 9-C continued) moted, the date of seniority thus established shall fix the standing of the hired engineer, who, if available and qualified within thirty days from date senior qualified fireman is promoted, will rank immediately ahead of the promoted fireman. The promoted fireman will retain his date of seniority as engineer and will be counted in proportion of promotions.

- (j) In case an engineer is hired and used in actual service when, under requirements of section (h), a fireman (or firemen) should have been promoted, the date of seniority thus established shall fix the standing of the senior qualified fireman (or firemen) due to be promoted, providing he or they are eligible and qualify within thirty days, who shall rank immediately ahead of the hired engineer on the engineers' seniority list. The hired engineer will retain his date of seniority and be counted in proportion of engineers to be hired.
- (k) The seniority date of the hired engineer shall be the date of his first service as engineer, except as provided in Sections (c), (i) and (j) of this Article. It is further provided that engineers hired, or permanently transferred from one seniority district to another on any railroad, shall be given a date of seniority as fireman corresponding with their date as engineer.

ARTICLE XI

Section 1. (a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working lists on any seniority dis-

trict, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

- (b) When reductions are made, they shall be in reverse order of seniority, except as provided in Paragraph (g-2), Article X, when in effect. No reductions will be made so long as those in extra passenger service are averaging the equivalent of 4,000 miles per month; in pooled, chain gang or any other unassigned service paying freight rates are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2,400 miles per month; on the yard extra list are averaging the equivalent of 25 days per month.
- (e) When hired engineers or firemen are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within thirty (30) days from the date their services are required.
- (d) Engineers or firemen taken off under this rule shall be returned to service as engineers ar firemen in the order of their seniority and in their respective class of service, as soon as it can be shown that men in extra passenger service average the equivalent or 4800 miles per month; in pooled, chain gang or any other unassigned service paying freight rates average the equivalent of 3,500 miles per month; in road extra service average the equivalent of 3,100 miles per month; in yard extra service average the equivalent of thirty (30) days per month.

(e) In returning engineers and firemen to service under Section 1, Paragraph (D), sufficient number of men will be added to the working list to keep the mileage between the maximum stipulated in Paragraph (D) and the minimum stipulated in Paragraph (B). If an additional assignment would reduce the mileage below the minimum stipulated in Paragraph (B) for the same class of service, regulation will be made by requiring each man in the class of service affected to lay off when he has earned, the equivalent of the maximum mileage stipulated in Paragraph (D).

Note—Under the provisions of this Paragraph, it is understood that if at a checking period it is found that the mileage in a pool averages the equivalent of 3,500 miles per month and a man could not be added to the pool without veducing the average wileage below 3,200 miles per month, regulation will be effected in the following checking period by taking the individual man off when he has made the equivalent of 3,500 miles per month; with the understanding that a man will be permitted to make an additional trip provided the preceding trip did not bring him up to the equivalent of 3,500 miles per month, and with the further understanding that the mileage of the last trip would not make his total mileage for the month in excess of 3,800 miles.

Section 2. After all engineers or firemen have been returned to service, the following regulations will apply with respect to further additions to the working lists:

- (a) In the regulation of extra passenger service, sufficient number of men will be assigned to keep the mileage or equivalent thereof within the limitations of 4,000 and 4,800 miles per month; in pooled, chain gang or any other unassigned service paying freight rates, 3,500 and 3,800 miles per month; in road extra service, 3,100 and 3,800 miles per month; in yard extra service, 30 and 34 days per month.
- (b) When the mileage of men in either of the classes of service specified in Section 2, Paragraph (A), averages in excess of the maximum stipulated therein, and an additional assignment would reduce the mileage below 4,000 miles per month in extra passenger service; 3,500 miles per month in pooled, thain gang or any other unassigned service paying freight rates; 3,100 miles per month in road extra service; or 30 days per month in yard extra service, regulation will be made by requiring each man in the class of service affected to lay off when he has earned the equivalent of the maximum mileage stipulated in Paragraph (A).

Note—Under the provisions of this Section, it is understood that if at a checking period, it is found that the mileage in extra passenger service averages in excess of the equivalent of 4,800 miles per month: in pooled, chain gang or any other unassigned service paying freight rates averages in excess of the equivalent of 3,800 miles per month; in road extra service averages in excess of the equivalent of 3,800

miles per month; in yard extra service averages in excess of the equivalent of 34 days per month, and if regulations cannot be made by assigning men without reducing the average below the minimum as stipulated, then regulations will be effected in the following checking period by taking the individual man or men off, so that earnings will not exceed the maximum for each class of service as set forth in Section 2 (A).

Section 3. In the regulation of assigned passenger, service, a sufficient number of men will be assigned to keep the mileage or equivalent thereof within the limitations of 4,000 and 4,800 miles per month; in assigned service paying freight rates, a sufficient number of men will be assigned to keep the mileage or equivalent thereof within the limitations of 3,200 and 3,800 miles per month. To keep within the mileage limitations set forth in this Section, additional crews may be added or swing men used to relieve the regular men on specified days. If regulation cannot be made as provided herein, min will be required to lay off so that the equivalent of 4,800 miles in passenger, or 3,800 miles in the other assigned service, will not be exceeded.

Section 4. In assigned yard service, regulation will be made by requiring each regularly assigned man to lay off when he has carned the equivalent of 35 days per month.

Section 5. In regulating the working lists in the respective classes of service, each list will be handled separately.

Section 6. Arrangements for keeping record of the mileage of engineers and firemen will be made between the railroad officials and committees, and, engineers and firemen will be required, upon the completion of each trip, to register their trip mileage or equivalent thereof.

Section 7. General committees will jointly agree upon a stipulated period for checking and regulating the mileage each month; provided, that the period must be 10, 15 or 30 days. Failing to mutually ugree, it will be understood that the 15-day period will apply. Local chairmen will work jointly in checking the mileage and assigning men. When the mileage has been checked and the number of crews assigned in accordance with mileage limitations, there will be no further computations or adjustments made during the same period.

Section 8. There should be a uniform application of these mileage limitations for both engineers and fremen in the same class of service, but in case of disagreement, each organization is authorized to regulate the mileage for the class of service it represents, with the understanding that the mileage regulations of this Article will be adhered to.

Section 9. It shall be the policy of both organizations, when working jointly, to insist upon hav-

ing a guaranteed monthly wage of not less than 24 days for all extra engineers and extra firemen retained in service, and when this is guaranteed, no reductions in the force will be insisted upon by either organization.

ARTICLE XII

- (Proposed joint working agreement for the Brothhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen:)
- (b) When the committees have been convened jointly they shall first proceed to the election of a Chairman, Vice-Chairman and Secretary from among their members. If the Chairman is elected from one organization, the Vice-Chairman and Secretary shall be elected from the other. The duties of the Chairman shall be to preside at the meetings of the joint committee and in his absence the Vice-Chairman shall preside.
- (c) The powers and duties of the Chairman or Vice-Chairman shall be purely parliamentary, and they shall hold office only for the session for which elected. The two General Chairmen shall conduct the hearings with the officials of the company, and

(Plaintiff's Exhibit No. 9-C continued) shall have charge of the committee when not in joint session, sharing equally in this work.

- (d) It shall be the duty of the Secretary to keep a true and correct record of the proceedings, which shall be read each day, and at the close of the session for which he was elected he shall furnish each committee with a copy thereof.
- (e) Having elected officers as above, the two committees shall meet jointly and deliberate upon all questions that may be presented in accordance with and subject to the laws of the respective organizations.
- (f) All questions may be disposed of by a majority vote of the members in the committee of the whole, but either side may, by a majority vote of its members, demand an organization vote, in which case each organization shall have but one vote, regardless of its numerical strength. In case of a deadlock due to one organization voting against the other, the matter may be further considered, and should neither side recede from their position, the Chairman, acting in conjunction with the Vice-Chairman, shall appoint a conference committee, composed of an equal number of members (not to exceed three) from each organization to consider and propose a solution of the question.
 - (g) After the committees in joint session have completed the draft of a proposition to be submitted to the company, it shall then be approved by an organization vote. Should it fail to receive the

(Plaintiff's Exhibit No. 9-C continued)
necessary approval, the Chairman will appoint a conference committee, which will make modifications in accordance with the views of its members.

- (h) When committees have arranged to work jointly neither Chairman nor committee will be permitted to go to the office of the railroad, with which they are negotiating, without the other Chairman or committee; and neither committee shall effect a settlement of the matters in negotiation without the knowledge and consent of the other, it being understood that either Chairman has the right to designate his Vice-Chairman or the chairman of the other organization to represent him.
- (i) In case of voting to make an issue the committees of each organization shall vote on the question in accordance with their respective laws, and shall immediately communicate the results of the vote to the committee of the other organization. If the committee of either organization shall fail to vote in favor of making an issue, the other organization shall not be barred from making an issue alone.
- (j) When a vote of the membership is taken, each organization will poll its members in accordance with its own laws, on a ballot with a blank space for the members to indicate the service they are performing.
- (k) When the result of the vote is known each organization will communicate the result to the other, and, should either organization fail to give

(Plaintiff's Exhibit No. 9-C continued) the necessary strike vote, the other shall not be barred from making the issue in accordance with its own laws.

- (1) When the two committees have formed a joint committee they shall thereafter work jointly, electing a Chairman, a Vice Chairman and Secretary at each session (this not to apply in case of a recess), and will not cease to work jointly by reason of any disagreement or deadlock until the question has first been submitted to the Chief Executives, as provided in the Chicago agreement, and their decision rendered thereon.
- (m) These rules may be modified or amended by a two-thirds vote of the members of the joint committee in order to meet local conditions, and subject to the approval of the two Chief Executives.

ARTICLE XIII.

- (a) Where jurisdiction over hostlers is transferred to the Brotherhood of Locomotive Firemen and Enginemen, and where jurisdiction over men running switch engines is transferred to the Brotherhood of Locomotive Engineers, the rights that have been acquired and practices now in effect for the man under the jurisdiction of the organization from which jurisdiction is transferred, shall be preserved by the organization to which jurisdiction is transferred.
 - (b) It being further understood that "fixtures"

(Plaintiff's Exhibit No. 9-C continued) in yard service shall not be displaced by road engineers during periods of business depression.

ARTICLE XIV.

(A) It is recommended that in future, seniority districts of the men of one organization shall not be changed, when such change affects the seniority of the men of the other organization, without first taking the matter up with the representatives of the other organization in joint conference, so that, if possible, the seniority districts will be the same for both organizations.

Should the joint committee disagree upon uniform seniority districts, the matter shall be referred to the Chief Executives by the two General Chairmen for handling, the understanding being that officers may be assigned with a view of trying to compose the situation and reach a satisfactory agreement for all concerned.

(B) It is recommended that in the future where a railroad or a portion thereof is leased or absorbed by another railroad, no changes should be made atfecting the seniority districts or assignments of the engineers and firemen on the teased or absorbed lines, until the general committees have handled the question jointly with the view of reaching a uniform agreement covering the question of seniority districts and assignments of the engineers and firemen on the leased or absorbed lines.

Should the general committees disagree upon a uniform method of handling questions of this character, the matter should be referred to the Chief Executives by the General Chairmen of the two organizations for handling, the understanding being that officers may be assigned with the view of trying to reach an agreement that would effect a uniform method of disposing of the question.

ARTICLE XV.

Laws of either organization which interfere in any manner with the proper execution of this agreement are hereby amended so as to avoid confliction therewith.

ARTICLE XVI.

This agreement shall not be amended, revised or annulled, until after thirty days' written notice has been served by order of the Convention of either organization.

RESOLUTION

It shall be the policy of both organizations, acting through their General Committees on each railroad, to open negotiations with the proper officials of such railroad for the purpose of securing their co-operation in placing in effect the rates of wages and rules of employment agreed to herein; Provided, That provisions of notice in existing schedules and laws of both organizations will be observed in re-opening schedules to accomplish this purpose.

EFFECTIVE AS REVISED MAY 1, 1923.

For the Brotherhood of Locomotive Engineers,

W. S. STONE, G. C. E.

M. E. MONTGOMERY, A. G. C. E.

L. G. GRIFFING, A. G. C. E.

F. S. EVANS,

R. H. COBB

J. F. EMERSON

R. T. FLEMING

For the Brotherhood of Locomotive Firemen and . Enginemen,

D. B. ROBERTSON,

President

TIMOTHY SHEA.

Assistant President

O. D. HOPKINS,

Vice President

M. O. LAISURE

T. M. SPOONER >

C. H. KEENEN

W: E. STEVENS

MEMORANDUM OF THE APPLICATION OF ARTICLE 10 (G-2) WHEN ADOPTED

(1) On the X. Y. Z. Railroad, the men hold seniority rights over the entire system, which has four terminals (A, B, C and D), where the men live and work out of, and where working lists of

engineers and firemen are maintained. If business falls off at (A) to such extent that it is found necessary to reduce the number of engineers at that point, reductions will be made according to the seniority of the engineers working out of (A), regardless of the fact that junior engineers may be working out of (B, C, or D).

- (2) Engineers cut off the list of (A) under the above example may displace any fireman or hostler their junior at (A), or they may displace any engineer their junior at (B, C or D).
- (3) Engineers cut off the list at (Λ) under the above example cannot take a position as fireman or hostler at any terminal except (Λ) , while there are engineers their junior working at any one of the other three terminals (B, C or D).
- (4) If, after the engineers list has been cut at (Λ) , business picks up and there is need for additional engineers at that point, a portion, or all of the men that were demoted at (Λ) during business depression, can be assigned to the engineers list at (Λ) , without requiring senior engineers (whether demoted or actually assigned as engineers) at (B, C, C, D), to take service as engineers at (Λ) .
 - returned to the engineers at (A) have been returned to the engineers list, and, because of increased business, it is found that additional engineers are still needed at that point, the senior demoted engineers at (B, C or D)—if there are

(Plaintiff's Exhibit No. 9-C continued) any—will be required in the order of their seniority, to take assignment as engineers at (A), before additional firemen are promoted, or engineers hired; it being understood they may return to their home terminal (B, C or D), when their seniority as engineers entitles them to a place on the engineers' list at their home terminal (B, C or D).

(6) If a business depression at (A) requires the engineers' list to be cut while, at the same time, an increase in business at (D) has resulted in all of the demoted engineers at that point having been of additional engineers' list, and there is still need of additional engineers at (D), the men cut off the engineers' list at (A), will be required to assist in protecting the engineers' board at (D), in the manner set forth in Example (5), before additional firemen are promoted or engineers hired.

[Endorsed]: Exhibit No. 9-C. Filed Oct. 10, 1940. Walter B. Maling, Clerk. By Harry L. Fouts.

DEFENDANT'S EXHIBIT A FOR IDENTIFICATION

REPORT OF THE EMERGENCY BOARD

Appointed April 14, 1937, Under Section 10 of the Railway Labor Act, May 20, 1926, as Amended June 21, 1934. In Re the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors Brotherhood of Railway Trainmen and Southern Pacific Company (Pacific Lines) and Northwestern Pacific Railroad Company

Report of Emergency Board Appointed April 14, 1937, Under Section 10 of the Railway Labor Act, May 20, 1926, as Amended June 21, 1934

In re The Brotherhood of Locomotive Engineers,
Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, Brotherhood of Railway Trainmen and Southern Pacific Company (Pacific Lines) and Northwestern Pacific Railroad Company

The Emergency Board appointed by the President pursuant to the provisions of the Railway Labor Act, and in accordance with his executive proclamation of April 14, 1987, to investigate and report its findings respecting matters in dispute between the Southern Pacific Company (Pacific Lines) and Northwestern Pacific Railroad Company and certain of their employees, convened at William Taylor

Hotel San Francisco, California, on April 20, 1937. All the members of the Board, consisting of G. Stanleigh Arnold, who was elected chairman, Charles Kerr, and Dexter M. Keezer were present. Frank M. Williams was appointed reporter and J. A. Weaver secretary. The Board held public hearings commencing on April 20, 1937, and concluding on May 6, 1937. Appearances in the order in which they were entered were made on behalf of the employees by G. W. Laughlin, 1st Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers; P. O. Peterson, General Chairman, Brotherhood of Locomotive Engineers; C. E. Weisell, Attorney, Brotherhood of Locomotive Engineers; F. H. Nemitz, Vice-President, Order of Railway. Conductors; G. G. McLennan, Chairman, General Committee of Adjustment, Order of Railway Conductors; C. E. Weisell, Attorney, Order of Railway Conductors; C. H. Smith, Vice-President, Brotherhood of Railroad Trainmen; C. V. McLaughlin, Vice-President, Brotherhood of Locomotive Firemen and Enginemen; R. J. Brooks, General Chairman, Brotherhood of Railroad Trainmen: M. E. Somerlott, Secretary, General Committee, Brotherhood of Railroad Trainmen; W. E. Jones, General Chairman, Brotherhood of Locomotive Firemen and Enginemen; C. W. Moffitt, 1st Vice-Chairman, Brotherhood of Locomotive Firemen and Enginemen; Donald R. Richberg, Attorney, Brotherhood of Railroad Trainmen, and the Brotherhood of

Locomotive Firemen and Enginemen. On behalf of both the Carriers, appearances were made by A. T., Mercier, General Manager, Southern Pacific Company; A. J. Hancock, Assistant General Manager, Southern Pacific Company; Robert McIntyre, Assistant to General Manager; Henley C. Booth, General Attorney; and Burton Mason, Commerce Attorney.

Before the conclusion of the hearings, the officers and counsel of the several Organizations and the Carriers made a determined effort to comply with our request that they eliminate, by compromise or agreement, as many of the forty-one items appearing on the strike ballot as possible. The result was that all of the items in which the Northwestern Pacific Railroad Company was concerned, namely, Cases Nos. 29, 31, and 40, were settled. Of the thirty-eight remaining items, twenty-seven, Cases Nos. 3, 4, 5, 11, 13, 14, 15, 17, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30, 32, 33, 34, 35, 36, 37, 38, 39, and 41, were eliminated in the same way.

As to the remaining cases, evidence was submitted and exhibits presented to the Board upon which are based the following Findings and Report.

Upon March 26, 1937, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen circulated a strike ballot among the Firemen, Enginemen, and Trainmen of the Southern Pacific Company and Northwestern Pacific Railroad Company. The strike ballot cited

forty-one causes of grievance. Over five thousand men were employed by the Carrier in the capacities named. These employees voted by a large majority to strike.

Of the forty-one items cited in the strike ballot, all except eleven have been amicably settled.

Although the disputes are ostensibly between the two Brotherhoods named above and the Carrier, most of the cases here reviewed arise from interorganization controversies wherein these Brotherhoods, and the Brotherhood of Locomotive Engineers and the Order of Railway Conductors are involved, as shown in the following discussion of the several cases.

The items as numbered on the strike ballot investigated by us were Cases Nos. 1, 2, 6, 7, 8, 9, 10, 12, 16, 18, and 24.

Case No. 1

Request for cancellation of agreement February 28, 1936, secretly negotiated between Carrier and representatives of the Brotherhood of Locomotive Engineers, placing certain restrictions as to handling of cases by the General Committee of the Brotherhood of Locomotive Firemen and Enginemen in violation of schedule rules, past practice and the Railway Labor Act, also definite understanding whereby the rights of our organization to represent its membership shall be protected in accordance with

(Defendant's Exhibit A continued) our agreements and Railway Labor Act. (Strike Ballot Statement.)

The Brotherhood of Engineers and the Brotherhood of Firemen and Enginemen each have a contract with the Southern Pacific Company, Pacific, Lines. These contracts embody the rules, resulting from many years of experience, accepted by the contracting parties as the law governing the industrial relationship between the Carrier and Engineers, and between the Carrier and Firemen and Engineers.

A characteristic of locomotive employment in railway operation is that there are constant changes in the duties to which an employee may be assigned. At all times these changes, due to the nature of the occupation, take place, but the fact is more noticeable in abnormal economic periods. In times of depression, large numbers of engineers are demoted, and, because of their seniority rights, displace firemen. It is quite conceivable, and perhaps has happened, that all employees on a division serving as firemen may be, in fact, demoted engineers. Conversely, in times of prosperity, large numbers of

Formerly the Engineers and the Firemen and Enginemen had a joint agreement, known as the Chicago Joint Working Agreement, with the Carrier. In 1927, this agreement was abrogated, and separate contracts were made. Most of the provisions of the separate contracts are taken bodily from the Joint Working Agreement.

(Defendant's Exhibit A continued) firemen are promoted to engineer service for long or short periods according to the volume of trans-

portation business.

The present dispute is an indirect result of this constant ebb and flow in the nature of the employment. A number of employees are members of both organizations. Some belong to neither, but most of them belong to one or the other. Consequently, when a fireman member of the Firemen's Organization is promoted to engineer service, he works under the contract negotiated by the Engineers' Organization, and is bound by the interpretation placed upon the rules thereof as interpreted by that Organization and the Carrier. A demoted member of the Engineers' Organization is similarly governed by the rules of the Firemen's Agreement.

This situation led to an arrangement of many years' standing, in which the Carrier and both Organizations, concurred, to the following effect:

The right of any engineer, fireman or hostler to have the regularly constituted committee of his organization represent him in handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule involved, is conceded. (Section (a), Article VII.)²

Chicago Joint Working Agreement, 1913.

Subsequently, in each of the separate contracts between the Carrier and each organization, the same provision was in effect preserved.³

In the National Railway Labor Act as amended (48 Stat. L. 926, U. S. Code, Title 45, Chap. 8) many of the principles of these and similar agreements between Carriers and the Organizations

Thus, Article 32, Section 22, of the Engineers' Agreement, effective January 9, 1931, provides:

The General Committee of Adjustment, Brotherhood of Locomotive Engineers, will represent all locomotive engineers in the making of contracts, rates, rules, working agreement, and

interpretations thereof.

All controversies affecting locomotive engineers will be handled in accordance with the recognized interpretation of the Engineers' contract as agreed upon between the Committee of the Brotherhood of Locomotive Engineers and the Management.

In matters pertaining to discipline, or other questions not affecting changes in Engineers' contract, the officials of the Company reserve the right to meet any of their employees either

individually or collectively:

Article 51, Section 1, of the Firemen's Agreement.

effective May, 1929, provides:

The right of any engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded.

throughout the country, especially those recognizing the rights of collective bargaining and representation, were embodied in Federal law, and appropriate methods for the protection of these rights were established.

The result of the agreements cited above (which obviously are in accord with the intent and purposes of the National Railway Labor Act) has been that, for over thirty years, engineer members of the Firemen's Organization have been represented by that Organization in cases involving rules in the Engineers' Agreement, subject, however, to the interpretation of the rules as agreed upon by the Carrier and the Engineers' Organization.

On February 14, 1936, the Carrier addressed a letter to the Brotherhood of Locomotive Firemen and Enginemen, which, in part, states:

* * * it has been decided that for cases presented by the Brotherhood of Locomotive Firemen and Enginemen involving rules in the

For example, Section 2 declares one of the pulposes of the Act is to "forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; to provide for the complete independence of carriers and of employees in the matter of self-organization", and Paragraph J of Section 3 of the Act, which relates to the National Board of Adjustment provides: "that parties may be heard either in person, by counsel, or by other representatives as they may respectively elect."

Engineers' Agreement, we must have an interpretation from the General Chairman, Brotherhood of Locomotive Engineers, on such rules as are applicable to the case or cases being so handled. It is hoped that the Brotherhood of Locomotive Firemen and Enginemen will arrange to comply with this requirement; if not, it will be necessary for the carrier, before rendering decision, to handle with General Chairman, Brotherhood of Locomotive Engineers, giving him history and facts in the case, with request that he furnish the carrier his interpretation of rules involved.

A similar notice was sent to the Engineers' Organization.

The Brotherhood of Locomotive Firemen and Enginemen protested that the procedure proposed did not conform to its Agreement with the Carrier, and would, if adopted, seriously modify and impair their members' rights under Article 51, Section 1, of the Firemen's Agreement. The Brotherhood of Locomotive Engineers regarded the assurance given as too indefinite and so notified the Carrier.

Upon February 27, 1936, the following accord was reached between the Brotherhood of Locomotive Engineers and the Carrier:

* * * when cases are presented to the carrier by representatives of an organization other than the Brotherhood of Locomotive Engineers, (Defendant's Exhibit A continued). involving rules in Engineers' Agreement, the carrier's representative will advise representatives of said organization that it must have an interpretation from the General Chairman, B. of L. E., on such rules as are applicable to the case, or cases, being so handled, If this is not done, the Carrier before rendering decision, will handle with General Chairman, B. of L. E., giving him history and facts in the case with request that he furnish the Carrier his interpretation of the rules involved.

It is understood that settlements made with said organization involving claims of engineers covered by rules of the Engineers' Agreement will be in conformity with interpretations agreed upon between the General Chairman, B. of L. E., and the Management.

The Firemen's Organization asserts, and it is admitted by the Carrier, that the former had no knowledge of the negotiations leading up to this Agreement other than what might have been inferred from the notice of February 14, 1936, above quoted. The reason given by the Carrier for the accord of February 27, 1936, is that the Brother-bood of Locomotive Engineers had, for a considerable period, been complaining about the handling of cases by the Brotherhood of Locomotive Firemen and Enginemen involving members of the latter organization acting in the capacity of engineers.

The basis of their complaint was that the Firemen's Organization, with the Carrier, was mishandling such cases and was thereby seriously undermining the Engineers' Agreement. The Brotherhood of Locomotive Engineers, had, according to the Carrier's representative, applied considerable pressure, going to the extent of threatening a strike unless all such cases were submitted to the Brotherhood of Locomotive Engineers before final settlement. Therefore, the Carrier had assumed no obligation to notify the Engineers' Organization until a case of this nature had been carried to a conclusion, although in many instances it had consulted with that Organization as to the interpretation of rules.

The agreement of February 27, 1936, between the Carrier and the Brotherhood of Locomotive Engineers, as interpreted and followed by the contracting parties, modifies and impairs the right of representation theretofore secured to the Brotherhood of Locomotive Firemen and Enginemen through its contract with the Carrier.

It also offends the objects and principles of the Railway Labor Act and infringes upon the rights intended to be secured by that Act. This legislation was enacted for the purpose of protecting national transportation against the consequences of labor disputes between carriers and their employees. It was devised by representatives of management, the employees, and the public. It secured the benefits of unhampered, collective bargaining to the several

(Defendant's Exhibit A continued) crafts or classes engaged in the work of railway transportation. When a craft or class, through representatives chosen by a majority, negotiates a contract with a carrier, all members of the craft or class share in the rights secured by the contract, regardless of their affiliations with any organization of employees. It is clearly provided that these rights may be protected by negotiation or by the several methods of adjustment established by the Act. It is true that the representatives of the majority represent the whole craft or class iff the making* of an agreement for the benefit of all, but it is equally true that nothing in the Act denies the right to any employee, or group of employees, to enforce through representatives of his or their own choosing, his or their rights under any such agreement. The whole spirit and intention of the Act is contrary to the use of any coercion or influence against the exercise of an individual's liberty in his choice of representatives in protecting his individual rights secured by law or contract.

In Section 2 of the Railway Labor Act, Paragraph 4, it is declared unlawful for the carrier to "influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization." Without finding that the carrier had the purpose of influencing its employees to leave one organization and join another, the Agreement of February 27, 1936, did,

^{*}Italics used in original unless otherwise noted.

as hereafter shown, put serious handicaps upon the power of the Brotherhood of Locomotive Firemen and Enginemen to protect promptly and adequately the rights of its engineer members, and to that extent made membership in the Brotherhood of Locomotive Engineers more desirable.

In the present case, the Carrier, in making the agreement of February 27, 1936, offended not only against the plain intent of the law, but broke its specific agreement with the Brotherhood of Locomotive Firemen and Enginemen, several times reaffirmed, that any engineer member of the latter Organization can have the regularly constituted committee of his Organization represent him in the handling of grievances. There was no restriction in the Firemen's Agreement upon this right. The interpretations of rules were to be made in accordance with the recognized interpretation agreed upon between the Carrier and the Organization holding the contract, but there was no limitation upon the right of an engineer member of the Brotherhood of Locomotive Firemen and Enginemen to have the committee of his Organization represent him in handling the case, under the recognized interpretation of the rule applying to his case.

The agreement of February 27, 1936, as interpreted and as followed by the officer of the Management directly in charge, and by the Brotherhood of Locomotive Engineers, required the Carrier to report the circumstances of every case of an engineer

member of the Firemen's Organization to the Brotherhood of Locomotive Engineers in every detail, and to refrain from making any adjustment or settlement of the case, until an interpretation of the rule involved had been given by the Brotherhood of Locomotive Engineers. This is inconsistent with the express public policy, as announced by the Railway Labor Act "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." Cases arise, of course, where the interpretation of a rule is doubtful. In these cases the Carrier should, in the interest of orderly procedure and for its own protection, seek a correct interpretation before applying the rule, but this is a far different procedure from that to which the Carrier as shown by its practice has bound itself, namely, to submit the case of every engineer who is represented by the Brotherhood of Locomotive Firemen and Enginemen, to the Brotherhood of Locomotive Engineers before making an adjustment or settlement. The record convinces us that in a large number of cases, such submission would accomplish nothing except delay and vexation. The Engineers' Organization insists that every case submitted involves an interpretation of a rule; and this is true, but in many cases the interpretation of the rule is well-recognized and its application is plain. The

(Defendant's Exhibit A continued)
Engineers' own Agreement explains the recognized interpretation of many of its rules.

A second and more definite infraction of the Firemen's Agreement as interpreted by the officer of the Carrier directly in charge of the adjustment of claims and the Brotherhood of Locomotive Engineers is in the matter of compromising claims. The Brotherhood of Locomotive Engineers reserves the right (which it often exercises) to compromise a claim of one of its members operating under its agreement; but now, under the Agreement of February 27, 1936, it denies the Brotherhood of Locomotive Firemen and Enginemen the right to compromise any claim in behalf of one of its engineer members. The right to make a compromise may be a valuable element in the successful handling of a case, and the deprivation of this right, long recognized as being accorded to the Firemen's Organization under its agreement, is a serious breach of that agreement.

The Engineers' Organization urged that any compromise constitutes a precedent, or at least may cast doubt upon the proper interpretation of a rule. Since, however, each of the Organizations has in many compromises hitherto made, specifically provided that the compromises are not to be considered precedents, or to be authority for any interpretation of the rules under which the cases arise, the objection can obviously be removed by similar provisions in all compromises made in future by the Firemen's

(Defendant's Exhibit A continued)
Organization in cases involving rules of the Engineers' Agreement.

From the foregoing it must be evident that the rights of the Firemen's Organization to handle effectively the cases of their engineer members were seriously affected by the Agreement of February 27, 1936, and that the Carrier should not have entered into any such agreement without giving proper notice to the Firemen's Organization and without having had more definite advice than it apparently had, as to the agreement's legality.

The contention that the Firemen's Organization, in handling the cases of engineer members, is undermining the Engineers' Agreement to any appreciable degree is not sustained by the evidence.

Further, it was not shown that the Firemen's Organization has any reasonable incentive to undermine the rules of the Engineers' Agreement. To the contrary, the interests of its members, who sooner or later may become engineers, requires that the Engineers' Contract be sustained. Lastly, a large number of the rules of the Engineers' Agreement are identical with those of the Firemen's Agreement, so that the undermining of the Engineers' rules would be equally injurious to the Firemen's Organization.

The Agreement of February 27, 1936, has, according to the Carrier, proved disappointing in its operation. Because of the eager rivalry between the two Organizations to increase their membership, there-

(Defendant's Exhibit A continued) is an expressed suspicion on the part of the Firemen's Organization that the Engineers' Organization will use the advantages gained by this Agree-

ment to their detriment. They feel, also, that the deprivation of their formerly recognized right to compromise is unwarrantable.

We find that-

- of Locomotive Engineers, and certain officers of the Southern Pacific Company, Pacific Lines, the Agreement of February 27, 1936, entered into between the Carrier and the officers of this Organization, has adversely affected rights of the Brotherhood of Locomotive Firemen and Enginemen secured to them by their Agreement with the Carrier in Article 51, Section 1, of the Firemen's Agreement of May 1929, and secured to them by the Railway Labor Act.
- (2) The Agreement of February 27, 1936, should, therefore, be cancelled.
- (3) The evidence presented in this case indicates clearly that this can be done without adversely affecting the just interests of the parties to the Agreement:
- (a) If in conformity with its own understanding of the recognized or agreed upon interpretation of the rule involved, the Carrier promptly makes its awards on claims for adjustment of grievances brought to it by representatives of the persons making the claims.

- (b) If the Carrier promptly furnishes copies of its awards to officers of Organizations having an interest in them, either because they hold an Agreement with the Carrier, a rule of which is being applied, or because they represent the party making the claim as a member of their Organization.
- (c) If in the event claims are compromised, this fact is clearly noted and as a matter of standard practice, it is stated that compromised awards are made without prejudice to the rule of the working agreement in question.
- (d) If the Organization holding the Agreement avails itself of existing remedies to correct any misinterpretation of its rules involved in a settlement made by the Carrier.

Case No. 2

Request for cancellation of agreement of October 26, 1936, secretly negotiated between Mr. R. McIntyre and representatives of the Order of Railway Conductors, placing certain restrictions as to handling of cases by the General Committee of the Brotherhood of Railroad Trainmen in violation of many years of past practice and the Railway Labor Act; also definite understanding whereby the rights of our organization to represent its membership shall be protected in accordance with our agreements and Railway Labor Act. (Strike Ballot Statement.)

In this case, the conflict involves a situation closely resembling that which has been covered in the preceding case, except that the dispute involves the relations between the Carrier and the Order of Railway Conductors and the Brotherhood of Railroad Trainmen.

Promotions of brakemen to employment as conductors, and demotion of conductors to brakemen occur constantly as in the case of fivenen, and engineers.

So far as the documents involved are concerned. the principal difference between this case and Case No. 1 is that the Brotherhood of Railroad Trainmen in its Agreement with the Carrier has made no special provision for representation where a member of its Order is operating as a conductor, instead of as a brakeman or other trainman. However, since for many years members of the Trainmen's Organization, acting as conductors, have been conceded by the Order of Railway Conductors the right to be represented throughout by the Trainmen's Organization, in disputes involving the Conductors' Agreement, it seems clear that until the present dispute arose, this was the agreed and accepted policy of both Organizations. This right, as shown by Case No. 1, is in accordance with the provisions of the Railway Labor Act.

In 1925 the two Organizations which had previously worked under a single Agreement with the Southern Pacific Company, Pacific Lines, separated

their Agreements. Thereafter, for a period of about ten years, their officers sometimes acted independently in the presentation to the Carrier of claims of their members for the adjustment of grievances and sometimes submitted joint dockets. During this period the Carrier freely consulted with the officers of either or both Organizations in the process of adjusting so-called inter-locking claims, i. e., claims presented by one Organization in behalf of a member working under the Agreements held by another. Organization,

In the spring of 1936 the General Chairman, Order of Railway Conductors, asked for an agreement which would give his Organization more control over the adjustment of claims presented by the Brotherhood of Railroad Trainmen on behalf of its members working as conductors, upon the ground that the Carrier was misinterpretating the rules of the Conductors' Agreement in many such cases.

In amplification of this request, he subsequently wrote in part:

What I desire is a rule, properly made out and signed, in order that there would be not misunderstanding. As stated to you over the telephone, it is my intention to regulate the action of Organizations other than the Order of Railway Conductors, in submitting claims or complaints to you or other General Officials involving Conductors' Agreement.

Italies ours.

On October 26, 1936, an Agreement between the Management and the Conductors' Organization, similar to the Agreement of February 27, 1936, between the Brotherhood of Locomotive Engineers and the Carrier, provided:

When cases are presented to the Carrier by representatives of an Organization other than the Order of Railway Conductors, involving rules in Conductors' Agreement, the Carrier's representative will advise representatives of said Organization that it must have an interpretation from the General Chairman, O. R. C., on such rules as are applicable to the case or cases being so handled. If this is not done, the Carrier, before rendering decision, will handle with General Chairman, O. R. C., giving him history and facts in the case with request that he furnish the Carrier his interpretation of the rules involved.

It is understood that settlement made with said Organization involving claims of conductors covered by rules of the Conductors' Agreement will be in conformity with interpretations agreed upon between the General Chairman, O. R. C., and the Management.

The officers of the Brotherhood of Railroad Trainmen did not participate in the conferences which led to the Agreement of October 26, 1936, and testi(Defendant's Exhibit A continued) fied that they were not officially informed about it until much later.

It was made evident that the Agreement has resulted in definite and important changes in the procedure previously followed by the Carrier in adjusting claims presented by the Brotherhood of Railroad Trainmen on behalf of its members working as conductors. In contrast with the Carrier's contention that the Trainmen's Organization was not affected, the officer of the Carrier immediately in charge of adjusting such claims indicated that he construed the Agreement to mean that he must refer all claims presented by the Brotherhood of Railroad Trainmen on behalf of a conductor member to the officers of the Order of Railway Conductors for an interpretation. This officer also indicated that he construed the Agreement to mean that he would not be free to compromise a claim brought by the Brotherhood of Railroad Trainmen on behalf of a member working as a conductor unless the General Chairman of the Order of Railway Conductors had approved it. These interpretations of the Agreement were insisted upon by the officers of the Order of, Railway Conductors. Officers of the Carrier, prior to the making of this Agreement, did not uniformly refer claims for the adjustment of grievances brought by the Brotherhood of Railroad Trainmen on behalf of a member working as a conductor to the Order of Railway Conductors. Also, they had

theretofore made compromise settlements of claims directly with officers of the Brotherhood of Railroad Trainmen when presented on behalf of a conductor member. It follows that the Agreement of October 26, 1936, did in fact deprive members of the Brotherhood of Railroad Trainmen of rights of long standing and that they were deprived of these rights by an Agreement about which they were not consulted.

The same reasons, in effect, for the necessity of the new Agreement were advanced in this case as in Case No. 1: namely, that mishandling by the Trainmen's Organization with the Carrier in case: involving conductors was resulting in the undermining of the Conductors. Agreement. The evidence does not indicate the existence of any such danger. Furthermore, the same condition exists between the Conductors and Trainmen as that between the Engineers and Firemen; i. e., constantly the trainmen are promoted to be conductors and conductors are demoted to be brakemen so that the breaking down of the Agreement affecting either class would be to the detriment of many future members of that class. Furthermore, the rules in the Conductor's and Trainmen's Agreement are for the most part practically identical.

The same answers are given by the Trainmen's Organization as were given by the Firemen's Organization in Case No. 1.

We unanimously find that there is no real justification for the Agreement of October 26, 1936, and that it should be cancelled for the same reasons stated in our conclusions in Case No. 1.

Blocked Cases

The following case, and several others included in the strike ballot, disclose a serious situation.

The original National Railway Labor Act was amended in 1934 and the National Railroad Adjustment Board was created. This Board consists of thirty-six members, eighteen of whom are chosen by the Carriers, and eighteen by Organizations representing the employees. The Board is composed of four divisions. The first division consists of ten members, five of whom are selected by the Carriers and five by the Organizations. It has jurisdiction over disputes "involving train and yard-service employees of Carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees."

Upon failure of any division to agree upon an award, in any case submitted to it, because of dead-lock, a neutral person, to be known as "referee" is to be selected to sit as a member of the division.

The National Radroad Adjustment Board was established, as we understand it, for the purpose of making binding awards in all cases involving "disputes between an employee or group of employees and a carrier or carriers growing out of grievances

(Defendant's Exhibit A continued) or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions."

Theoretically, it is possible for the Organization representing an aggrieved employee to secure an enforceable judgment through the Board. We find, however, that, in practice, this remedy is apparently becoming more and more inaccessible in cases where the employee whose grievance is involved, is working under an Agreement of an Organization other than that of which he is a member—a fact which seemed to be conceded and deplored by the very able attorneys who appeared before us in this case.

The reason for this situation is that while the Board represents Carrier and Labor equally, many cases arise where one or another of the labor organizations represented on the Board feels that an award in favor of an employee member of another Organization will re-act adversely to his (the representative's) Organization. So many cases of this kind have arisen that, keen though their rivalry is, the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen have apparently agreed among themselves that no case will be presented to the Board by one Organization without the consent of the other and the

[&]quot;A similar arrangement appears to exist between the Order of Railway Conductors and the Brotherhood of Railroad Trainmen.

Board will not assume jurisdiction unless this consent is given. Consequently, not only in the case of the Carrier involved here, but throughout the whole railway system of the United States, an increasing number of grievances cannot be even heard by the Board. This results in grave injustice to the employee.

This mass of unadjusted cases will continue to grow until the present situation is remedied. They may not involve principles of sufficient importance to cause the circulation of a strike ballot, but when, for some other reason, a strike ballot is taken, the accumulation of these cases will be included in the ballot in increasing numbers.

In the present instance, although the situation has existed for only a short time, there were several of these cases among the forty-one items on the strike ballot. Had it not been for the much appreciated cooperation of the attorneys and officers representing the Organizations and those of the Carrier, it would have been a physical impossibility for us to have made an examination sufficient to justify a report within the time allowed by the Act. When, if the present situation continues, strike ballots include all the "blocked" cases which have accumulated, the efficiency of any Emergency Board will be increasingly impaired.

At present one of the principal purposes of the Railway Labor Act, namely: "to provide for the (Defendant's Exhibit A continued) prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions' is being in many cases defeated by the foregoing circumstances.

Unless the Organizations themselves, which have the power to do so, solve this question, it lies within the jurisdiction of Congress to enact remedial legislation.

Meanwhile, this Board must not attempt to usurp the functions of the National Railroad Adjustment Board. The Act contemplates the settlement of disputes through orderly processes, and it is only after any grievance has been reviewed by the appropriate agency, as established by the Act, that an Emergency Board can properly make a recommendation based on the merits of the case.

Case No. 6

Claim of Brakeman W. S. Orr, Western Division, for 50 miles runaround, Oakland, July 26, 1935. (Strike Ballot Statement.)

The dispute over this claim arises from disagreement about the status of Mr. Orr at the time the claim originated. Officers of the Brotherhood of Railroad Trainmen contend that while Mr. Orr was assigned as a brakeman in pool freight service and eligible for the next call as an extra conductor, the Carrier used a junior promoted brakeman as extra conductor and thus became liable to pay Mr. Orr

for 50 miles in conformity with Article 23 of the Agreement between the Brotherhood of Railroad Trainmen and the Carrier, providing in part as follows:

Section (a) Trainmen in pool freight and unassigned service will be run first-in first-out, and if not called in turn through no fault of their own, they shall be allowed 50 miles and stand first out; if not called for service within the limits of eight hours, 100 miles will be allowed and stand last out. Runarounds will be paid at the rate applicable to class of service for which they should have been called.

Officers of the Order of Railway Conductors contend that the claim of Mr. Orr is invalid because (1) the Agreement of the Conductors' Organization governs any failure to call in for service an extra conductor, and, (2) for the territory in question, the Order of Railway Conductors has an agreement with the Carrier of July 13, 1935, governing layovers under which Mr. Orr could not properly make a claim for a runaround payment.

The Brotherhood of Railroad Trainmen has sought to refer the claim to the National Railway Adjustment Board, Division 1, but the officers of the Order of Railway Conductors have refused to permit such reference on the ground that the claim was properly settled under the Conductors' Agreement, and hence there is no dispute which is properly referable to that Board.

Your Board feels that this case which, in the general issue involved, closely resembles Case No. 8, following, should be referred to the National Railroad Adjustment Board, Division 1; and that the blocking of such reference is ill-advised. The question of when a trainman, in shifting to employment as a conductor, and vice versa, is properly subject. to a particular agreement with the Carrier is one which the National Railroad Adjustment Board. Division 1, is particularly well equipped to settle because of its familiarity with precedents and satisfactory practice on railroads through the country. Also the question is one to which the Organizations involved might easily offer a general solution adequately protecting their interests as well as those of the Carrier in this and other similar cases. We recommend that, to avoid needless delay and inconvenience, they proceed to a solution through agencies specially constituted to handle such matters and available to them.

·Case No. 7

Protest against engineers being permitted to take assignments as firemen after giving up their road rights and accepting permanent assignments as fixture yard engineers.

When during the depth of the depression the working lists of switch engineers were reduced, several engineers who were removed from these lists secured vorking assignments as road firemen.

The officers of the Brotherhood of Locomotive Firemen and Enginemen contend that such assignments were made in violation of Section 18, Article 28, of their Agreement with the Carrier (first incorporated in May 1910 as Paragraph E, Section 13, of their Agreement at that time) providing that:

A fireman, or a promoted fireman returned to firing service, under Section 36 (a), bidding for and accepting assignment to the position of switch engineer, thereby forfeits all seniority rights as fireman.

Officers of the Brotherhood of Locometive Engineers contend, on the contrary, that in taking positions as switch engineers, the engineers in question did not forfeit their seniority rights as firemen. In support of this contention, they cite Section 6 (a), Article 32, of their Agreement with the Carrier, providing:

When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district, under the following conditions.

The Carrier contends that since the engineers in question were in service as engineers when they accepted assignments to yard service, Section 18, Article 28, of its Agreement with the Brotherhood (Defendant's Exhibit A continued) of Locomotive Firemen and Enginemen does not apply, it being properly applicable only to firemen

or promoted firemen returned to firing service.

The switch engineers whose assignments as road firemen gave rise to the protest of the Brotherhood of Locomotive Firemen and Enginemen in this case are at present working again as switch engineers. Consequently, the protest is not aggravated by their current displacements of firemen. However, the case does present a clear-cut conflict over the proper interpretation of provisions in working agreements. As such it is properly referable to the National Railway Adjustment Board, Division 1, for decision, but representatives of the Brotherhood of Locomotive Firemen and Enginemen stated that such reference is blocked by the unwillingness of the officers of the Brotherhood of Locomotive Engineers to permit it.

If we were called upon to settle the conflict over the proper interpretation of the rules in question, we would decide that the Carrier did not violate Section 18, Article 28, of its Agreement with the Firemen's Organization in assigning these switch engineers to service as road firemen. We were pursuaded by the evidence presented that this rule was not designed to deprive engineers of their seniority rights as firemen upon their acceptance of assignments as switch engineers, but for another purpose. However, the proper solution of this problem is

Railway Adjustment Board, Division 1. If it is true that it was impossible to have this case presented to that Board, the extent to which the purposes of the Railway Labor Act are being frustrated is here well illustrated.

Case No. 8.

Claim of Brakeman Rito Frain, Los Angeles Division, for 131 miles, July 18, 1929. Similar claims and cancellation of an agreement dated September 28th, 1929.

The claims involved are based on Section (a), Article 42, Trainmen's Agreement, reading:

When trainmen are held waiting for their own crews, after having been taken off regular runs and sent out on special or other trains, they will be paid full compensation for such time as they are so held.

And there are a large number of these cases unsettled pending settlement of this dispute. The Brotherhood and Conductors, Committees appealed a number of claims as involved in this case, and in each instance claims were submitted on basis Section (a). Article 42. Trainmen's Agreement was applicable.

Without conference and agreement with the Brotherhood's Committee the Carrier made an agreement with the Conductors' Committee on

(Defendant's Exhibit A continued).

September 28th, 1929, setting aside the Trainmen's rule and providing for rules and payment of 100 miles at brakemen's rate in lieu of mileage of the assignment (for example, Rito Frain case, 131-miles), on basis Article 46, Conductors' Agreement was applicable.

The Jurisdiction Committees of the two Organizations (Brotherhood of Railroad Trainmen and Order of Railway Conductors), on April 2nd, 1932, decided that payments should be made under Article 42, Trainmen's Agreement.

This case also involves the principle of the Carrier eliminating schedule rule from Trainmen's Agreement without conference and agreement with the General Committee of the Brotherhood of Railroad Trainmen. (Strike Ballot Statement.)

This is a claim made by the Brotherhood of Railroad Trainmen on behalf of brakeman Rito Frain, Los Angeles Division, who held a regular through freight assignment between Los Angeles and Indio, a distance of 131 miles. Just prior to July 18, 1929. Frain was called to serve as conductor between Indio and Calexico. At the conclusion of his tour, July 17, he deadheaded to Los Angeles. On the morning of July 18 he was marked as brakeman on the Los Angeles board. He lost one day in Los

(Defendant's Exhibit A continued)
Angeles awaiting the return of his regular assigned crew.

He made claim for 131 miles through the Chairman of the Brotherhood of Railroad Trainmen and was allowed 100 as a brokeman.

The two rules involved are:

Section (a), Article 46, Conductors' Agreement which provides:

When conductors are held waiting for their own crews, after having been taken off regular runs and sent out on special or other trains, they will be paid full compensation for such time as they are so held.

Article 42, Section (a), Trainmen's Agreement contains the same provision relating to trainmen.

The Chairman of the Brotherhood of Railroad Trainmen presented Mr. Frain's claim for 131 miles to the Train Service Board of Adjustment, Western Region. It was later transferred to First Division, National Railroad Adjustment Board.

It is claimed by the General Chairman, Order of Railway Conductors, that Frain retained his status, as conductor during the waiting period, and that the recognized interpretation of the Conductors' Agreement must govern. The Byotherhood of Railroad Trainmen contends that he resumed his status as a brakeman during the waiting period.

There is a conflict of jurisdiction between the Brotherhood of Railroad Trainmen and the Order

of Railway Conductors as to which should represent Frain. On this question the Jurisdiction Committee of the Order of Railway Conductors and Joint Relations Committee of the Brotherhood of Railroad Trainmen, and President Berry, of the Order of Railway Conductors, and President Whitney, of the Order of Railroad Trainmen, rendered a decision on August 3, 1932, which was as follows:

Decision.—It is decided that when a trainman is used as a conductor for a trip or trips and then is relieved as a conductor, he automatically reverts to the jurisdiction of the Trainmen, thereby sustaining the Trainmen's contention that they had the right to submit their claim to the train service board,

The representative of the Conductors' Committee, refused to comply with this decision, and on January 16, 1936, President Phillips, of the Order of Railway Conductors, withdrew his approval of the submission to the Adjustment Board.

Since, in the opinion of this Board, the question involved is simply as to when a brakeman assigned to duty as a conductor resumes his status as brakeman, the National Railroad Adjustment Board, Division 1, should take jurisdiction.

Our comment and recommendation in Case No. 6 are applicable to this case.

Case No. 9

Protest against the use of Shasta District, Sacramento Division, engineers on Portland Division out of Klamath Falls when Portland Division firemen (demoted engineers) are available at Klamath Falls, in violation of agree- . ments with the Brotherhood of Locomotive Eiremen and Enginemen providing that when train service is available engineers and firemen from Eugene extra list will be dead-headed from Eugene to Klamath Falls to perform work on Portland Division, also agreement with the Brotherhood of Locomotive Firemen and Enginemen that when train service is not available Portland Division firemen (demoted engineers) will be used out of Klamath Falls when no regular or extra engineers are available. (Strike Ballot statement.)

The Portland Division and the Shasta District are separate and distinct seniority districts. The Portland Division extends from Portland to Klamath Falls and the Shasta District, of the Sacramento Division, extends from Klamath Falls to Gerber.

On November 26, 1926, representatives of the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen entered into an agreement with the Carrier which provides, among other things, that "in case

Portland or Shasta extra lists at Klamath Falls should become exhausted, men from either extra lists may be used."

This arrangement continued in effect until April 1927, when a closed pool arrangement was put into effect for the firemen between Klamath Falls and Crescent Lake, and subsequently adopted by the engineers with some slight modifications.

There was much confusion as to what actually occurred in this case, and apparently considerable misunderstanding up to the time that it was presented to this Board. It appears that the representatives of the Carrier in a number of instances made use of men not eligible for service under the firemen's and the engineers' agreements above noted, thereby saving dead-head mileage. At first when the attention of the Carrier was called to these cases proper restitution was made to the employees whose places had been improperly taken. Later the firemen's organization, understanding that the engineers' organization had canceled its agreement with the Carrier and was allowing the use of engineers from the Shasta Division upon the Portland Division out of Klamath Falls, filed its protest with the National Mediation Board.

It developed at the hearings, however, that the agreement of the engineers' organization and the Carrier had apparently never been abrogated. The dispute as shown in the strike ballot consists of a claim upon the part of the firemen's organization

that the Carrier had broken its agreement with the firemen's organization with regard to using engineers. As presented to this board; however, the contention now is that there was a joint agreement between the firemen's and engineers' organizations with the Carrier.

Our finding is that there was no such joint agreement, since the engineers entered into their agreement with the Carrier independently and several months after the firemen's organization had made its agreement. When the engineers' organization made its contract all employees serving as engineers were, of course, bound by the terms of the agreement. The organization had the same right to cancel its agreement, and if it had done so, all engineers, whether members of the firemen's organization or not, would have been bound by the cancellation.

There is no similarity between this case and cases numbers 1 and 2. No right of representation is here involved. Our finding would have been the same even had it not developed that the engineers' organization had not canceled its agreement with the Carrier.

Case No. 10

Claim of Conductor C. Oltman and crew, Sacramento Division, for additional compensation while engaged in fire train service, May 15th to November 20th, 1926, except May 29, October 6 and 9, 1926.

This conductor member filed claim for additional compensation for each date he performed fire train service, May 15th to November 20, 1926. He was paid for three dates, May 29th, October 6th and 9th, 1926, but Carrier declines payment for other dates account alleged objection from another organization. (Strike Ballet Statement.)

In this case, conductor Oltman, a member of both the Order of Railway Conductors and the Brother-hood of Railroad Trainmen, presented through officers of both Organizations claims for extra compensation for himself and crew while engaged in fire train service. Through officers of the Order of Railway Conductors, the extra compensation sought was awarded by the Carrier for the dates October 6 and 9, 1926. Through officers of the Brotherhood of Railroad Trainmen, the extra compensation sought was awarded for the date May 29, 1926.

It is the contention of officers of the Brotherhood of Railroad Trainmen that on eighty-five other days between May 15 and November 20, 1926, conductor Oltman and his crew performed fire train service of the same kind as that for which extra compensation was awarded to him through their Organization for May 29, 1926, and that consequently, he and his crew are entitled to the extra compensation sought for the eighty-five additional days in question.

Officers of the Order of Railway Conductors join . with the Carrier in contending that the claim of conductor Oltman is invalid because it was not presented before April 1934, when in the process of revising the fire train rule of the Conductors' Agreement (Article 30) they reached an understanding that the Carrier would not be obligated to pay claims for additional compensation arising under that rule in addition to those already presented to it. Also, officers of the Order of Railway Conductors contend that the claim of conductor Oftman's crew for added compensation is invalid because it is contrary to a similar understanding between the Carrier and officers of the Brotherhood of Railroad Trainmen reached during the process of revising the rule in the Trainmen's Agreement applicable to fire train service (Article 27) settling existing claims for added compensation on account of fire train service. The Carrier contends that the claim of conductor Oltman and crew is further invalidated by the fact. that the service performed on the eighty-five days for which additional compensation is sought was not the same as that performed on May 29, October 6 and 9 for which additional compensation was granted, but evidence to support this contention was not presented.

This case results from the fact that conductor Oltman was a member of both organizations and courted complications when he filed claims through each of them. However, the rule is, as we under-

stand it, that when an interpretation of a rule is agreed upon and a case settled accordingly, an employee is entitled to have the same settlement applied with reference to subsequent services of the same character as that in which the settlement was reached. In this case the interpretation of the rule was agreed upon by the conductors organization and the Carrier with reference to the services of October 6 and 9, 1926. It was applied to the services of May 29, 1926, as to which conductor Oltman was represented by the trainmen's organization. We believe that he is entitled to similar compensation for all like services up to the time when the Carrier and conductors organization agreed to change the rule, April 10, 1934.

The conductors organization had no right to agree (nor do we believe that it intended to agree) that Oltman's claims for the period May 29-October 6, to which he was represented by the trainmen's organization should be waived. It was apparently a matter of oversight that he and his crew were not safeguarded when the two organizations agreed with the Carrier to change the rule. If the trainmen's organization had waived his rights even unintentionally, or if the conductors organization had had the right to do so, he would have had no recourse. Neither of these circumstances existed, however, so far as we can discover. He still has the right to be represented by the trainmen's organization in accordance with the accepted interpretation

of the rule as agreed upon by the conductors' organization and the Carrier up to April 10, 1934. To find otherwise would be to find that the conductors' organization had the right to compromise the claim of an employee represented by the trainmen's organization.

The Board recommends that the Carrier should negotiate with the trainmen's organization alone with regard to this case.

The contention was raised that the services here involved were different from those which were settled, but nothing was presented in the testimony tending to offset the positive evidence offered inbehalf of Oltman. If there is any substantial evidence showing that the character of the employment for the period covered by the present claim is different from that as to which claims were allowed, it can, of course, be considered in the negotiations or presented in subsequent proceedings.

Case No. 12

(Mediation Case A-85.) Cancellation parttime mileage agreement dated March 21st, 1933, effective April 1st, 1933, and Carrier's instructions December 22, 1934, making effective Conductors' Mileage Limitation Agreement of March 17th, 1933, applicable to part-time men.

This dispute involves the action of Carrier in agreeing to place part-time men under the (Defendant's Exhibit A continued)
Order of Railway Conductors' Mileage Agreement without the concurrence of the Brotherhood of Railroad Trainmen's Committee notwithstanding such part-time men worked a portion of each month under the Brotherhood of Railroad Trainmen's Schedule: (Strike Ballot Statement.)

On March 17, 1933, the General Chairman, Order of Railway Conductors, and the Assistant to General Manager, Southern Pacific Company, Pacific Lines, made what was known as the "Monthly Maximum Mileage Agreement."

By this Agreement, part-time conductors, i. e., trainmen working part of the time as conductors, were made subject to the provisions for mileage limitation in the Conductors' Agreement with the Carrier.

On March 21, 1933, the General Chairman, Order of Railway Conductors, joined with the General Chairman, Brotherhood of Railroad Trainmen, and the Carrier in making a joint Agreement governing the mileage of part-time conductors.

On August 21, 1934, the General Chairman of the Order of Railway Conductors served notice on the other parties to it of the desire to cancel the Agreement dated March 21, 1933. On December 22, 1934, the Carrier, feeling that by its terms the Agreement must be cancelled upon proper notice from one of the parties, gave notice to the Brother-

(Defendant's Exhibit A continued)—hood of Railroad Traimmen that the Agreement had been cancelled, and instructed all superintendents that "until further advised, the Agreement reached March 17, 1933, with the General Chairman, Mr. McLennan, O. R. C., covering conductors, will apply also to part-time conductors."

The General Chairman, Brotherhood of Railroad Trainmen, protested this action, contending that its concurrence must be had to validate any agreement "effecting trainmen working regular or extra, and who are used as conductors any portion of the month" because they properly come under the mileage limitation provision of the Trainmen's Agreement with the Carrier.

This case involves the question of whether a parttime conductor is properly subject to the mileage
limitation provisions of the Conductors' Agreement
with the Carrier or subject to the mileage limitation
provision of the Trainmen's Agreement with the
Carrier. However, this question was not pressed
when the officers of the Order of Railway Conductors and the Brotherhood of Railway Conductors and the Brotherhoo

The Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and En(Defendant's Exhibit A continued) ginemen had a dispute in Cases No. 11 and No. 29 involving, as we understand it, the same general question before us in this case. They settled it amicably upon a basis which seems equitable to us. We recommend therefore that the several interests in this case settle it upon a similar basis. If there are differences in principle between this case and Cases No. 11 and No. 29, the case should be resubmitted to the National Board of Mediation since we believe that the question may have been simplified by the compromise made in these and other cases during the hearing.

Case No. 16

(Mediation Case A-139.) Request of Committee for withdrawal of formal thirty (30) days notice by the Carrier of May 14th, 1935, of intention to abrogate Section (b), Article 32. Trainmen's Agreement.

Upon receipt of formal thirty days' notice from the Carrier the representatives of the Brotherhood invoked the services of the National Mediation Board, file A-139.

This case involves the principle as to the right of the Carrier to cancel or abrogate this schedule rule, or other schedule rules without an agreement with the Brotherhood's Committee.

The B. R. T. Committee contends that if any changes, such as zoning, etc., are to be made.

(Defendant's Exhibit A continued)
it should be by negotiations with such committee and not with or by request of some other
organization, in that the rights of trainmen to
perform service in accordance with their choice
and seniority is involved. (Strike Ballot Statement.)

Section (b), Article 32, of the Trainmens' Agreement with the Carrier, against the abrogation of which the officers of the Brotherhood of Railroad Trainmen protest, makes the following provision:

A trainman with sufficient seniority as conductor to enable him to hold regular assignment as such on his seniority district, will not be permitted to perform service as brakeman, either regular or extra.

Virtually, the same provision is made by Section (b), Article 36, of the Conductors' Agreement with the Carrier, which states that:

A conductor with sufficient seniority as conductor to enable him to hold regular assignment as such on his seniority district, will not be permitted to perform service as brakeman, either regular or extra.

Under these rules, an employee eligible to hold a regular assignment as a conductor may be forced to take an assignment distant from his home and otherwise inconvenient to him, when he would prefer work as a brakeman on a more convenient run.

Consequently, on May 1, 1935, the General Chairman of the Order of Railway Conductors served the customary (30 days) notice on the Carrier that his Organization wished to eliminate Section (b), Article 36, of its Agreement with the Carrier. Since this rule is virtually identical with Section (b), Article 32, in the Trainmens' Agreement, the Carrier, to keep uniformity in the two Agreements, and also because the rules in question had not been applied satisfactorily from its point of view, on-May 14, 1935, gave the General Chairman of the Brotherhood of Railroad Trainmen the customary notice of its desire to eliminate Section (b), Article 32, of its Agreement with the Trainmen's Organization. It is the withdrawal of this notice which the Brotherhood of Railroad Trainmen seeks.

According to the Carrier, the rules in question at present apply to only 2,495 miles of the total of 7.841 miles in its system, having either been waived; or superseded by the creation of so-called seniority zones through its Agreement with the Organizations affected. The Carrier and the officers of the Brother-hood of Railroad Trainmen have also agreed upon additional seniority zones which, if adopted, would, together with waivers, supersede the application of the rules in question over its entire system. On this basis, the Carrier is willing to withdraw its notice to the Brotherhood of Railroad Trainmen of its desire to eliminate Section (b), Article 32, of the Trainmens Agreement, Officers of the Order of

Railway Conductors, however, object to such a settlement of this controversy.

We feel that such hardships as may be imposed upon employees eligible to hold regular assignments as conductors by the rules in question can be eliminated by the adoption of appropriate seniority zone arrangements. Whether or not the arrangements agreed upon by the Carrier and the officers of the Brotherhood of Railroad Trainmen are proper, we do not know, If not, we feel it incumbent upon the office s of the Order of Railway Conductors to join with the officers of the Brotherhood of Railroad Trainmen in work toward an agreement on proper seniority zones to supersede the rules in question upon that minor portion of the Carrier's Pacific Lines where they still apply,

Officers of the Order of Railway Conductors and the Brotherhood of Railroad Trainmen cooperated in placing the rules in question in their Agreements and so placed them over the objection of the Carrier. They should cooperate in removing them or superseding them by appropriate zoning arrangements. In the meantime, we do not feel that the Carrier, having reached an Agreement with officers of the Brotherhood of Railroad Trainmen on a mutually acceptable solution of the problem presented should press its request that Section (b), Article 32 of its Agreement with the Trainmen's Organization be eliminated.

Case No. 18

Claim of Yardmen E. L. Corbett, R. Nichols, E. G. Van Scoy, and R. A. Smith, Tueson Division, for one hour March 23, 1934, and claim of Yardmen E. L. Corbett, R. C. Mullins, R. Nichols, and H. L. Kiser, for one hour July 11, 1934; also request that check-back be made to cover yard crews who were required to go beyond Mile Post 986 from January 1st, 1926, to date of settlement of this case. Similar case is pending from the yardmen, at Watsonville Junction, Coast Division (Docket Case No. 284).

On January 1st, 1926, the Carrier extended Xard Limit Board at Tueson and dispute was submitted to Train Service Board of Adjustment, and on February 18, 1932, the Board rendered Decision No. 4540, reading:

This controversy involves the right of the Carrier to change switching limits without regard to schedule provisions covering payments in road service. The Board has heretofore expressed its opinion on the expansion or contraction of switching limits in the following language:

The Board decides that the location of relocation of yard limit boards is a managerial prerogative, but that yard limit boards do not necessarily designate switching limits.

(Defendant's Exhibit A continued)
It is believed changing switching limits should properly be subject to negotiations between the Management and interested employees because rates of pay and rules are involved."

In this particular case the Board does not understand that the switching limits were changed in accordance with the above quoted decision, and the case is therefore remanded to the parties at interest to dispose of in accordance therewith.

The Carrier agreed with the Firemens' Committee to grant an increase in rates of pay to Firemen where required to perform service beyond the former location of the yard limit board, with provisions for retroactive payment to January 1st, 1926.

The Carrier declines to negotiate settlement or grant yardmen the same consideration afforded firemen. (Strike Ballot Statement.)

In support of these claims the officers of the Brotherhood of Railroad Trainmen contend that several years ago the Carrier arbitrarily extended the yard limits at Tucson, Arizona, and Watsonville Junction, California, and thus became liable to pay yard crews extra compensation for every, time they passed the old yard limits. In support of this contention they cite Article 15 of the Yardmens' Agreement with the Carrier, as follows:

Where regularly assigned to perform service within switching limits, yardmen shall not be used in road service when road crews are available, except in case of emergency. When yard crews are used in road service under conditions just referred to, they shall be paid miles or hours, whichever is the greater, with a minimum of one hour, for the class of service performed, in addition to the regular yard pay and without any deduction therefrom for the time consumed in said service.

The Carrier contends that there is nothing in its Agreement with the Yardmen which restricts in any way its right to extend yard limits; that such an extension is distinctly advantageous to yard crews in enlarging the volume of work available to them; and that hence there is no basis in any existing Agreement with the Brotherhood of Railroad Trainmen or in equity for the claim of added compensation for Yardmen on account of extension of yard limits in the cases in question. There is no evidence showing that the extension of the yard limits was not reasonable or that it was made for the purpose of using Yardmen for actual road-service.

Since the officers of the Brotherhood of Railroad Trainmen predicate these claims upon an interpretation of the Yardmens' Agreement with the Carrier, which the Carrier does not accept, the cases should

(Defendant's Exhibit A continued)
be referred to the National Railroad Adjustment
Board, Division 1.

Case No. 24

Claim of Brakeman J. H. Carter, Coast Division, for double miles, San Luis Obispo-Santa Barbara and Santa Barbara-San Luis Obispo, June 20, 1934, and dispute as to elimination of helper district involved.

At the time the helper district was agreed to, there were two grades on this district in excess of one per cent, but they were eliminated in 1928 and since that time the Carrier has opported double-headers from terminal to terminal, holding that the second engine was a helper, and have handled far in excess of the tormage of one engine or tonnage that had been previously handled by engine and helper; in fact, they are handling approximately the rating of two engines over the district. Strike Ballot Statement.)

In this case the officers of the Brotherhood of Railroad Trainmen supported the claim of brakes mair factor for double miles San Luis Obsept Sapin. Barbara and Santa Barbara San Luis Obsept Sapin. Barbara and Santa Barbara San Luis Obsept Sapin. The contention that the Management has so reduced the grades in the territory in anexhour that it is not longer troporty classified as a help a district. The Carrier disputes the facts presented by the officers.

of the Brotherhood of Railroad Trainmen in support of their contention. In the meantime, the Agreement between the Brotherhood of Railroad Trainmen and the Southern Pacific Company, Pacific Lines, provides, in Article 26, that Santa Barbara-San Luis Obispo is helper territory. There has been no careful joint inquiry by the Carrier and the Brotherhood of Railroad Trainmen directed to the question as to whether the Agreement should be revised in this regard.

As a claim arising under the Agreement of the Brotherhood of Railroad Trainmen, we fail to see where the claim of brakeman Carter has merit, since it seems to be directly contrary to the applicable Article of this Agreement, However, the National Railway Adjustment Board, Division 1, is available to decide this question.

On the question of whether, in fact, the territory Santa Barbara-San Luis Obispo is helper territory, we suggest that negotiation between the Carrier and the Brotherhood of Railroad Trainmen would be appropriate, and that successful negotiation might be facilitated by establishment of a Joint Committee of Inquiry to report on the physical facts involved which are currently in dispute.

Conclusion

The controversies, on which we have made findings and recommendations in this report, arise pri-

marily from failure to observe earefully the explicit provisions and the spirit of the Railway Labor Act. Strict observance of this Act would reduce the array of controversies we have reviewed to trivial proportions. We earnestly commend the parties in conflict to such observance.

Toward the close of our hearings a national officer of one of the four labor organizations involved in these disputes asserted, without challenge, "this is not a strike against the Southern Pacific Railroad, it is a fight between these organizations." Though we feel that the management of the Southern Pacific Company, Pacific Lines, by greater certainty and centralization in its handling of claims for the adjustment of grievances, would have mitigated the conflict, we found that there is much truth in the statement quoted above. We feel that these four great railroad employee organizations owe it to their members; to their admirable history, and to the public to settle their interorganization disputes without any such threatened interruption of interstate commerce as that which caused you to create this Board.

Respectfully submitted.

- (S) G. STANLEIGH ARNOLD.
- (S) CHARLES KERR.
- (S) DEXTER M. KEEZER.

[Endorsed]: Exhibit No. A for Identification. Filed Oct. 10, 1940.

[Endorsed]: No. 9991. United States Circuit Court of Appeals for the Ninth Circuit. General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company, an unincorporated association, Appellant, vs. Southern Pacific Company, a corporation, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, an unincorporated association, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Fifed December 5, 1941.

PAUL P. O'BRIEN.

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 9991

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association,

Appellant.

VS.

SOUTHERN PACIFIC COMPANY.

a corporation,

Appellee.

GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association.

Intervener.

STATEMENT OF POINTS, AND DESIGNATION OF PRINTING

The following is a statement of the points on which the appellant intends to rely upon this appeal:

1.

The eyidence is insufficient as a matter of law to support the following findings, each thereof being separately or severally specified:

(a) Finding 4(a), in substance, that plaintiffhas been ever since the quaetment of the Railway Labor Act the representative of the class or craft of locomotive engineers on Pacific Lines only "for purposes of collective bargaining and agreement," and thereby negativing the allegation of plaintiff's complaint that it is the representative of said class or craft of locomotive engineers "for all the purposes of said Act."

- (b) Finding 5, in substance, that agreements have been negotiated between plaintiff and defendant and between defendant and intervener concerning rates of pay, rules and working conditions of the crafts of engineers and firemen.
- (c) Finding 6(a), in substance, that there are constant changes in the duties and status of the engine employees and a constant ebb and flow between the craft of engineers and firemen.
- ary 1, 1940, one-fifth of the firemen employed had been demoted from the engineers' working list and that on July 1, 1940, approximately one-seventh of the firemen employed had been demoted from the engineers' working list.
- (e) Finding 7(a), in substance, that an individual engineman who chooses not to act individually for himself, but through a representative, with respect to the disputes mentioned in said finding, may choose a representative other than the one chosen by the majority of said class or craft of locomotive engineers with respect to rights under the Engineers' Agreement.

- (f) Finding 7(b), with respect to the scope and meaning of "the usual manner of handling," and, in substance, that a representative may be chosen by an individual member of a craft or class, other than the representative chosen by the majority of the craft or class.
- (g)— Finding 7(b), in that said finding fails to include the statement, i.e., omits to find, that the "usual manner of handling" requires that all claims and grievance cases be handled in accordance with the recognized interpretation of the General Committee making the schedule.
- (h) Finding 7(c), in substance, that on almost every railroad of the United States the usual manner of handling claims and grievances of enginemen is as set forth in finding 7.
- (i) Finding 8, in substance, that the engineers' and firemen's Brotherhoods are in competition for members and that if members of the firemen's Brotherhood were required to present their individual claims and grievances through the engineers' Brotherhood such would discourage membership in the firemen's Brotherhood and encourage membership in the engineers' Brotherhood.
- (j) Finding 8, in substance, that the presentation of such claims and grievances by a representative other than the representative chosen by the majority of the craft or class of engineers does not affect or alter the Engineers' Agreement or infringe any right of plaintiff as the representative of the craft or class of engineers.

- (k) Finding 9, in substance, that a provision similar to Section 1, Article 51, of Firemen's Agreement has appeared in all contracts of the Brotherhood of Locomotive Engineers, or the agencies thereof, with defendant.
- (1) Finding 10, in substance, that the so-called mileage provisions of the Firemen's Agreement, which are mentioned in the complaint, are provisions concerning which it is competent for the intervenor to bargain and contract with the defendant.
- (m) Finding 10, insofar as the "direct interest" therein mentioned is intended to mean that the craft of firemen has any right to bargain or contract with defendant as to any matter or matters with regard to which the majority of the craft or class of locomotive engineers has designated the plaintiff as its representative.
- (mm) Finding 10, insofar as the "direct interest" therein mentioned is intended to mean that the craft of firemen has any right to bargain or contract with defendant concerning rates of pay, rules and working conditions of the craft of locomotive engineers as to which the majority of the craft or class of locomotive engineers has designated the plaintiff as its representative.
- (n) Finding 11(a), in substance, that Section 2 of Article 43, of Firemen's Agreement, sets forth conditions upon which an engineer has the privilege of displacing a fireman.

Southern Paci

(o) Finding 11(a), insintended to mean that any tion 3 of Article 43, Firendemoted engineers who have returned to the engineers' guished from being removed.

working lists) in accordance tations of said sections, or o

(p) Finding 11(a), insintended to mean that an Section 4 of Article 43, should regulate the number signed in any class of servitation upon the mileage or e

(q) Finding 11(b), in 32, Section 6, of Engineers intended to regulate the dis

(r) Finding 12(a), in s age provisions of the engine ments since December 1, 191 the firemen's and engineers tion of engineers and displa

May, 1913, have been substant (s) Finding 12(b), in Pacific Lines the privilege of displace firemen was first of

answers under Article 37, 8 teen's Agreement, were and sonably calculated to protect

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with the mileage limiherwise.

herwise,
far. as said finding is
of the provisions of
Firemen's Agreement,
of engineers to be ase or to place any limirnings of engineers,
ubstance, that Article.

Agreement, was and is blacement of firemen, bstance, that the miles and firemen's agree, and, on Pacific Lines, rules governing demo;

ement of firemen since ially identical.

abstance, that on the demoted engineers to attend on

ce, that questions and ection 15, of the Fireare intended and reathe craft of firemen and have a reasonable relation to firemen's seniority rules, insofar as such questions and answers purport to and do regulate the determination of engineers' emergency service.

- (u) Finding 16, in substance, that Section 1 of Article 43 is the substantial equivalent of Section 36(a) of agreement between the firemen's Brotherhood and defendant dated May 16, 1910.
- (v). Finding 16, in substance, that all provisions of said Article 43 quoted in the complaint, with the exception of the last three paragraphs thereof, appeared in substantially the same form in Article X1 of the Chicago Joint Agreement dated May 17, 1913.

II.

Each of the findings hereinabove specified is clearly erroneous, due regard being given to the apportunity of the trial court to judge of the credibility of the witnesses.

III

Neither the evidence nor the facts found supports Conclusion of Law 2, or the corresponding matter in the Decree.

11"

Neither the evidence nor the facts found supports Conclusion of Law 3(a) and (b), or the corresponding matter in the Decree.

1.

Neither the evidence nor the facts found supports. Conclusion of Law 4, or the corresponding matter in the Decree.

VI

Neither the evidence nor the facts found supports Conclusion of Law 5, or the corresponding matter in the Decree.

VII.

The evidence is insufficient as a maîter of law to support a conclusion or judgment in favor of defendant or intervener.

DESIGNATION OF PRINTING

Appellant therefore designates the whole of the record (including this Statement and Designation) for printing.

GEORGE M. NAUS

Attorney for Appellant C. E. WEISELL

Of Counsel for Appellant

Receipt of a copy of the foregoing Statement of Points and Designation of Printing, this 30th day of December, 1941, is hereby acknowledged.

C. W. DURBROW HENLEY C. BOOTH, BURTON MASON

Attorneys for Appelled DONALD R. RICHBERG

EUGENE W. PRINCE

Attorneys for Intervener.

[Endorsed]: Filed Dec. 31, 1941. Paul P. O'Brien, Clerk.

Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States OCTOBER TERM. 1943

No. 27

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY (AN UNINCORPORATED ASSOCIATION), PETITIONER,

vs.

SOUTHERN PACIFIC COMPANY AND GENERAL GRIEVANCE COMMITTEE OF THE BROTHER-HOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (AN UNINCORPORATED ASSOCIATION)

No. 41

GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (AN UNINCORPORATED AS-SOCIATION), PETITIONER,

228

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE SOUTHERN PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, ETC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

IN THE

United States Circuit Court of Appeals For the Ninth Circuit

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association,

Appellant,

VS:

SOUTHERN PACIFIC COMPANY, a corporation, and GENERAL GRIEVANCE COM-MITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINE-MEN, an unincorporated association,

Appellees.

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Friday, May 22, 1942.

Before: Denman, Haney and Healy, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Messrs. George Naus, and Clarence Weisell, counsel for appellant, and by Mr. Burton Mason, counsel for appellee Southern Pacific Company, and by Mr. Donald Richberg, counsel for appellee General Grievance Committee of the Brotherhood of Locomotive Firemen, and submitted to the Court for consideration and decision.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Friday, November 13, 1942.

Before: Denman, Haney and Healy, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE

By direction of the Court, Ordered that the type-

written opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

OPINION

Before: Denman, Haney and Healy, Circuit Judges.

Denman, Circuit Judge:

Appellant, hereinafter called Engineers' Committee, brought suit for a judgment declaring invalid certain provisions in a contract, hereinafter called the Firemen's Schedule, between the defendant below, hereinafter called the Railway, one of the appellees, and the intervenor below, also one of the appellees, hereinafter called the Firemen's Committee. The district court's judgment gave an interpretation of the contract and a declaration of the rights of the contract and a declaration of the rights of the contracting parties and their effect upon the intervenor which both the parties to the contract, the Firemen's Committee and the Railway, agree is correct. The Engineers' Committee appeals.

The two Committees are the majority representatives of the Railway's firemen and engineers as members of their respective crafts or classes under Section 2, Fourth and Seventh, of the Railway Labor Act of May 20, 1926, as amended June 21, 1934, hereinafter called the Act. Each Committee, as majority representative, had made for its craft or class an agreement with the Railway concerning rates of pay, rules, and working conditions, hereinafter called the Engineers' Schedule and the Firemen's Schedule.

A. One of the grounds of appeal involves the question whether, in addition to representing the engineer class or craft in bargaining with the Railway for agreements concerning rates of pay, rules, or working conditions of engineer "employees as a class," as provided in Section 2, Fourth, the Act makes the Engineers' Committee also the exclusive representative of the individual engineer in his disputes with the Railway arising from the individual contract of employment which the Railway has with "each employee," as provided in Section 2, Eighth, of the Act.²

^{1&}quot;Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shalf have the right to determine who shall be the representative of the craft or class for the purposes of this Act. * * *."

²⁸ Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the

Paragraph Eighth embodies in each of these separate contracts of individual employment when made, here of each engineer, the right of "conferring" "individually," or through his "local representative," with the management. Obviously, this right of conference by the engineer individually with the employer, includes the right to confer as an individual concerning claims that the Railway has failed to perform the individual's contract in which the right is embodied. It would be ironic comedy to say to the engineer, "True, the Act put this conferring provision in your employment contract, but you cannot use it for any matter arising out of the contract."

The individual engineer in making his contract has the right also to negotiate for and agree to any

Mediation Board that all disputes between the carrier and its employees shall be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them."

³Sec. 2. Fourth. "* * Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization."

terms of employment with the Railway, and is not required by the Act to accept the rates of pay, rules, or working conditions of the Engineers' Schedule. Virginian Railway Co. v, System Federation, 300 U. S. 515, 557.

Usually, when the engineer makes his individual contract, it is with an implied covenant that his rates of pay, working conditions and the rules governing him are those of the Engineers' Schedule.⁴ This, however, does not change the individual character of the contract which each engineer has with

The Engineers' Schedule contains no provision concerning representation of engineers in the arbitration of disputes before the Adjustment Board as to whether the Railway has broken the engineer's individual employment contract. It specifically recognizes the individual engineer's right to confer with the Railway under the proviso of Section 2, Fourth, in the following provision of the Engineers' Schedule.

[&]quot;Representation Rule.

[&]quot;Sec. 22. The General Committee of Adjustment, Brotherhood of Locomotive Engineers, will represent all lococotive engineers in the making of contracts [not controversies over] rates, rules, working agreement, and interpretations thereof.

All controversies affecting locomotive engineers will be handled in accordance with the recognized interpretation of the Engineers' contract, as agreed upon between the Committee of the Brotherhood of Locomotive Engineers and the Management.

In matters pertaining to discipline, or other questions not affecting changes in Engineers' contract, the officials of the Company reserve the right to meet any of their employes either individually or collectively." (Emphasis supplied).

the Railway. The craft Schedule is not a contract employing anyone. It is a separate agreement—not between the engineer and the Railway, but—between the craft as an organization and the Railway. As stated, in nearly all cases certain of its terms, by implied reference, are embodied in the individual engineer's employment contract. Under the decision of Virginian Railway Co. v. System Federation, supra, the engineer could have made an employment agreement with the Railway that he was to have the same rates of pay as those of the schedule of a British railway.

The Act provides for the arbitration of disputes arising from both the craft contract and the individual employee contract. The same facts may show a breach of both contracts. That is to say, a breach of the majority craft contract that engineers, when employed, (othersthat those having the special conditions referred to in the Virginian Railway case,) shall have certain rules and conditions of employment governing them, and also a breach of the individual employment contract of engineers, quite likely subsequently employed, embodying such craft rules and conditions.

The grievances here involved are those arising from claimed breaches of the engineers' individual contracts of employment, having in their terms of agreement the rates of pay, rules and working conditions of the Engineers' Schedule. The Engineers' Committee claims the exclusive right of representation of the individual engineer in such individual

grievances in conferences with the Railway and before the first division of the Adjustment Board created by Section 3, First (h) of the Act to arbitrate such grievances, hereinafter called the Board. Section 3, First, (h) provides for four such divisions "whose proceedings shall be independent of one another."

The Railway engineers are usually men who have been firemen. Some who have been members of the Firemen's Brotherhood retain their Firemen's Brotherhood membership after they become engineers, and do not join the Engineers' Brotherhoods; some of neither organization. The declaratory judgment here sought concerns only members of the Firemen's Brotherhood who may or may not be members of the Engineers' Brotherhood.

The contract between the Firemen's Committee and the Railway provides that an engineer belonging to the Firemen's Brotherhood may have the Firemen's Committee represent him in the handling of "his" grievances. The Engineers' Committee contends he cannot be so represented and sought to have the district court declare inoperative and yold the word "engineer" as used in the following provision of the Firemen's Schedule.

"Article 51.

Adjustment of Differences

"Sec. 1. The right of any engineer, fireman, hostler, or hostler helper to have the regularly constituted committee of his organization rep-

resent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded. * * *." (Emphasis supplied).

The district court refused so to declare, and gave its judgment

"a. Intervenor [Firemen's Committee] has the lawful right to represent members of the Brotherhood of Locomotive Firemen and Enginemen, and any other individuals who desire its services, in presenting any type or class of individual claims or grievances against defendant arising out of engine employment, in cluding employment as engineer, and intervenor has the lawful right to handle such claims and grievances to a conclusion, and plaintiff does not have the sole, or any, right of representation in any such cases against the will of the individual claimant." (Emphasis supplied).

The Act provides three steps in the process of determining and securing enforcement of the engineer's grievances arising out of a breach by the employing Railway of his individual contract. The first is by negotiation in conferences with the management of the Railways If no agreement is reached in conference, the next step is by petition to the first division of the Adjustment Board.

Concerning the purpose of the Congress in cre-

ating the Adjustment Board and adding to its powers in the amendment of 1934, the Supreme Court says, "By the new measure Congress continued its policy of encouraging the amicable adjustment of labor disputes by their voluntary submission to arbitration before an impartial board, but it supported that policy by the imposition of legal obligations." Virginian Railway Co. vs. System Federation, 300 U. S. 515, 542-543.

If the petitioner prevail before this Board, the Board makes its order directing the Railway to pay the money due, say, for hours of work not credited by the Railway; or, say, if fully paid, to cease from requiring the engineer to work more than a certain number of hours in a certain period of time.

If the Railway refuse to obey the order of the Board, the petitioner may sue in a United States District Court in a proceeding in which the Board's findings and order are prima facie evidence of the facts stated and in which, if the engineer prevail, the court enforces the engineer's right against the Railway by writ of mandamus or otherwise. Act, Section 3, First, (D).

The first, or conference step, in arbitrating a grievance is provided in Section 3, First, (i) of the Act, as follows:

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of greenees or out of the interpretation or application of agreements concerning rates of pay, rules, or working con-

ditions, including cases pending and anadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." (Emphasis supplied).

The phrase "an employee" shows that the paragraph contemplates the grievances of an individual under his personal employment contract, above described. By the terms of Section 2, Fourth, that contract provides that he may confer with the emplover concerning his contract of employment, either individually or through his local representative. Since the Act itself so gives the individual engineer the right to confer with the Railway, the phrase "usual manner" must mean the steps usually taken by an engineer personally or by his representative through the sub-managerial and managerial personnel "up to and including the chief operating officer."5 In the cases here contemplated the employee is an engineer having as his local representative the Firemen's Committee. If this nego-

⁵The district court found on sufficient evidence that the customary practice included individual employee conferences, as well as those with Brother-hood representatives.

tiation does not settle the grievance, the engineer may file a petition before the Adjustment Board.

When the engineer has filed his petition and thus becomes a party in a proceeding before the Board, his right of representation is provided by Section 3, First, (j) as follows:

- "(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them." (Emphasis supplied).
- The Engineers' Committee contends that the engineer party suing on his individual contract with . the Railway can "elect" to have no labor organization representing him other than the Engineers' Committee. The startling injustice of this contention appears from the following: Assume three engineers, each asserting that he is entitled by seniority to have an engine on a certain run. The Railway has decided that A has the seniority. B and C each claims that he is the senior. This may involve a pure question of fact as to date of employment, or resignation and return, or other easily imaginable factual situations. It is destructive of the fundamental concept of representation in such a justiciable controversy that the engineers B and C, each claiming the other not entitled to the run. must have the Engineers' Committee as his repre-

sentative. Obviously the Engineers' Committee cannot act for both.

More aggravating circumstances can be added to this situation. Such as, that one of the two engineers having the claim against the Railway is a member of the Engineers' Brotherhood in good standing, with his dues paid, and the other, not a member of the Engineers' Brotherhood, has been its bitter opponent and critic. The relationship of confidence and trust necessary between a suitor and his representative would be entirely absent in the second case.

It is no answer to say that the latter engineer may argue his own case, (and, quite likely, have an ass for a client,) or may dip into his own pocket and hire an attorney, quite likely for a fee in excess of his claim. The employee's union with its officers skilled in presentation of labor claims and serving him free of cost, is his true need and expectancy.

The fundamental purpose of the Act is to provide a method of settlement of disputes by negotiation and by conducting a proceeding before people skilled in the art of railroading, such as those who composed the Adjustment Board. If, however, a man having his individual contract, recognized by the Act, finds himself deprived of the right of becoming a party before the Adjustment Board, with a skilled and powerful union representing him, by the refusal of that union to accept the representation, as in the case above described, and with no right to seek the representation of any other union, he will be driven

into the courts and out of the process contemplated by Congress for the arbitration of his dispute within the provisions of the Act.

What the Engineers' Committee is contending is that instead of there being the above described three statutory steps in the process, there must be four steps. There would be three tribunals instead of two before whom he must litigate, the first being a union of which he is not a member, in which he litigates his claim against a member of the union.

We cannot believe this was the intent of a Congress, so meticulous in providing for the right of individual conference concerning the individual employment contract of the engineer, and who, the Supreme Court has held, may make any sort of a contract he pleases with the employer.

The provisions of the Act specifically defining the word "representative" lend no support to this contention of the Engineers' Committee. "Representative" as defined in Section 1, Sixth, may be "any * * * labor union," whether or not representing a majority of the craft.

"Sixth. The term 'representative' means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them." (Emphasis supplied).

It is only with reference to craft organization and collective bargaining, that is, craft action, that a union chosen as a representative must be that chosen by the majority. Section 2, Fourth, reads

"Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. * * *." (Emphasis supplied).

The general definition of Section 1, Sixth, must mean just what it says,—that "any * * * union," whether of a majority or minority of a craft, may represent "employees" in matters other than collective bargaining, that is, employees having grievances from breaches of individual contracts which "each" has with the carrier.

The Engineers' Committee also contends that its position is aided by the provision of Section 2, Sixth, with respect to conferences with the employer, as follows:

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect

to such dispute, to specify a time and place at which such conference shall be held: * * *."

But in this it ignores the fact that Section 2, Fourth, provides that the engineer may confer individually or through his local representative, a provision which supersedes every other provision in the Act, including Section 2, Sixth. As seen in footnote 4, above, the Engineers' Schedule contains no provision for representation in grievances arising from a claimed breach of the engineer's individual employment contract.

The Engineers' Committee also relies upon the decision of the Supreme Court in Virginian Railway v. System Federation, 300 U. S. 515, 548, and quotes the following language stating that the Act

"imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other."

This statement of the Supreme Court does not apply to the individual contract of the engineer and should not be taken out of the context of the opinion. The preceding sentence shows that it applied only to an entirely different kind of contract,—that to be made by a majority representative of the craft for bargaining collectively, and had nothing to do with the individual contract between the engineer and the employer. The language is (page 548) as follows:

"The obligation imposed on the employer by

§ 2. Ninth, to treat with the true representative of the employees as designated by the Mediation Board, when read in the light of the declared purposes of the Act, and of the provisions of § 2, Third and Fourth, giving to the employees the right to organize and bargain collectively through the representative of their own selection, is exclusive." (Emphasis supplied).

The sentence quoted by the Engineers' Committee is followed by one showing that the "true representative" there spoken of was the representative of the craft for purposes of collective bargaining. The succeeding two sentences (pages 548-549) read as follows:

"We think as the Government concedes in its brief, that the injunction against petitioner's entering into any contract concerning rules, rates of pay and working conditions, except, with respondent, is designed only to prevent collective bargaining with anyone purporting to represent employees, other than respondent, who has been ascertained to be their true representative. When read in its context it must be taken to prohibit the negotiation of labor contracts, generally applicable to employees in the mechanical department, with any representative other than respondent, [majority representation] but not as precluding such individual contracts as petitioner may elect to make directly with individual employees. The decree, thus construed, conforms, in both its affirmative and negative aspects, to the requirement of $\S 2$." (Emphasis supplied).

At one portion of appellant's brief it asserts, "It is not here contended that the craft member may not individually, without the use or agency of any representativé, handle his own case." Yet, when it comes to "an employee" petitioning the Adjustment Board under Section 3, First, (i), after failure individually to adjust his difference by conference, the Engineers' Committee's brief claims that the word "parties" referred to in Section 3, First, (j) "means (as to craft members) the representative designated by the majority of the craft for the purposes of the Act." The absurdity of the contention that the word "parties" does not include the engineer party suing on his employment contract, but means only the representative designated by the majority of the craft, is apparent when we see that the Act provides that such a sole possible party to the proceeding before the Adjustment Board shall be heard "in person," (although it is an unincorporated association,) or by "counsel," or by other "representatives."

If the Engineers' Committee's contention were correct, and the word "representative" wherever used in the Act means "majority representative," and the majority representative is always the party petitioning before the Board, then we have Section 3, First, (j) reading, "The majority representative may be heard by a majority representative." The Engineers' Committee's contention makes meaning-

less the word "representative" in this provision of the Act.

The Engineers' Committee continues to press its extreme contention that only the majority craft committee can be the party before the Board, by adopting the reasoning of two decisions—one from the second and one from the third divisions of the Board.

In the case of Gooch v. Ogden Union Railway Company, award No. 514, National Railway Adjustment Board, second division, Gooch, a car inspector, claimed he was improperly discharged and was denied rights under Rule 35 of the Schedule of Rules. Rule 35 provides that such a case must be presented to the Railway officials by the "duly authorized local committee." That is to say, Gooch admitted that the committee, not Gooch, became the petitioner to the Board under Section 3, First, (i) and the party before the Board under Section 3, First (j). Since this is the right Gooch complained was violated, it is hard to see what leg he had to stand on:

The local committee refused to represent him before the division and he sought to petition it "in.

Since the divisions are "independent of one another;" neither the second nor third was the administrative body provided by the Act for engineers and firemen. Even if the decisions of these two divisions were not erroneous, they establish no precedent of an administrative practice of the first division administering the law for firemen and engineers.

person." The Railway contended the division had no jurisdiction to entertain such a personal petition and the contention was sustained.

The opinion bases its conclusion on the fact that the "petitioner bases his claim upon the Schedule of Rules in question [Rule 35] which in itself, is a duly executed contract between the union and the carrier: * * * and petitioner relies upon such contract stipulations." (Emphasis supplied). Despite lengthy quotations from the Act, the division's opinion never mentions the individual employment contract which "each" employee has with the carrier, or the overriding proviso of Section 2, Fourth, which 2, Eighth, embodies in each such contract.

The opinion assumes the refusal of the craft committee to act for Gooch was not arbitrary. However, it hazards the dictum that even if arbitrary and for unjust motives, the purposes of the Act would be satisfied if the division refused to hear the employee "in person," as provided by paragraph' (j). And this as satisfying the provisions of an Act which the Supreme Court holds has as its primary objective "encouraging the amicable adjustment of labor disputes by their voluntary submission to arbitration before an impartial board!" Virginian Railway Co. v. System Federation, 300 U. S. 515, 542-543.

This decision was followed by the third division in the case of Rudd v. Minneapolis, St. P. & etc. Ry., award No. 1718. There the local union of the craft arbitrarily refused to represent Rudd, claim-

ing a priority right to a position as timekeeper, because his grievance originated "prior to the time. the aggrieved became a member of the Brotherhood," The third division refused to hear him "in person," holding that "orderly administrative procedure demands that presentation of grievances to the Board should be through a Brotherhood." Here, again, the opinion makes no mention of the contract with "each" employee of Section 2, Eighth, with its right of individual conference. Here, also, as in the Gooch case, Rudd admitted his case was not to be handled with the employer "in the usual manner," by stating "that orderly administrative. procedure demands that ordinarily presentation of grievances to this Board should be through a Brotherhood."

Apart from the admission, the opinion of the third division has a clear dictum to the effect that a railway employee must join the union of a majority of his craft or he will be denied the arbitral processes of the Act. And this holding that the Act requires that the contract of employment made by the employer and the employee can have its claimed breach heard by the division of the Board only if the employee join a particular union, is of an Act, Section 2, Fifth, of which also provides that no carrier "shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization." That is to say, the Act itself compels the employee to do what it regards as wrongful in the employer.

We do not agree that a railway employee who does not belong to the local of a Brotherhood of his craft at the time his grievances arose, or who belongs to no Brotherhood at all, cannot petition the proper division of the Board under Section 3, First, (j). The true and contrary rule is that held in two decisions of the Emergency Boards, later discussed.

The Engineers' Committee cites phrases in cases concerning provisions of the National Labor Relations Act. The purpose of that legislation is not to provide for the adjustment of disputes concerning the terms of employment agreements "by their voluntary submission to arbitration before an impartial board," and which lead to court litigation. for their enforcement. The National Labor Relations Act leads only to orders of its Board directing the employer to cease and desist from specific unfair labor practices, defined in that Act, inimical to freedom of labor organization, and to affirmative action by the employer to correct the harm caused by his wrong-doing. Back pay awarded to effectuate the purposes of that Act confers no legal right on the employee to collect it. This court has enjoined suits against an employer to collect back pay awarded by the National Labor Relations National Labor Relations Board v. Sunshine Mining Co., 125 F. (2d) 757.

If it be claimed that failure to comply with a back pay or reinstatement decree constitutes a contempt, neither the employee nor his union may sue

to punish for the contumacy. The Supreme Court holds that this may be done only by the Labor Board itself, in an opinion contrasting the National Labor Relations Act with the Railway Labor Act, and stating that "decisions dealing with the legal obligations arising under the Railway Labor Act cannot be regarded as apposite" to the National Labor Relations Act. Amalgamated Workers v. Edison Co., 309 U. S. 261, 269. On the question of the right of an employee to representation in the Railway Labor Act's processes for arbitration of grievances from breach of the employee's contract of employment, the decisions under the National Labor Relations Act can throw no light.

The interpretation we have made is that of the Fifth Circuit in Estes v. Union Terminal Co., 89 F. (2d) 768, 770, and of two opinions of the Emergency Board appointed by the President under Section 10 of the Act. Unlike the second and third divisions' decisions above cited, the Emergency Boards' decisions directly concerned the firemen's, engineers' and conductors' crafts of the first division of the Board. Also, unlike those decisions, the Emergency Board in one of the cases was construing the same provision of the Firemen's Schedule, Article 51, Sec. 1, here under consideration.

In In re Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, etc., Report of the Emergency Board appointed April 14, 1937, the railway had a secret contract with the Engineers' Committee restricting the handling by the Firemen's Committee of grievances of individual engineers who were members of the Firemen's Brotherhood. The question was whether the Engineers' Brotherhood had an exclusive right to represent engineers in their individual disputes with the carrier. The Emergency Board held that the Firemen's Committee could represent the engineer members of the Firemen's Brotherhood in such disputes, stating

"When a craft or class, through representatives chosen by a majority, negotiates a contract with a carrier, all members of the craft or class share in the rights secured by the contract, regardless of their affiliations with any organization of employees. It is clearly provided that these rights may be protected by negotiation or by the several methods of adjustment established by the Act. It is true that the representatives of the majority represent the whole craft or class in the making [Emergency Board's emphasis] of an agreement for the henefit of all, but it is equally true that nothing in the Act denies the right to any employee, or group of employees, to enforce, through representatives of his or their own choosing, his or their rights under any such agreement.; The whole spirit and intention of the Act is contrary to the use of any coercion or influence against the exercise of an individual's liberty. in his choice of representatives in protecting his individual rights secured by law or contract.

"In the present case, the Carrier, in making the [secret] agreement of February 27, 1935, offended not only against the plain intent of the law, but broke its specific agreement with the Brotherhood of Locomotive Firemen and Enginemen, several times reaffirmed, that any engineer member of the latter Organization can have the regularly constituted committee of his Organization represent him in the handling of grievances. There was no restriction in the Firemen's Agreement upon this right. The interpretation of rules were to be made in accordance with the recognized interpretation agreed upon between the Carrier and the Organization holding the (Engineers' craft) contract, but there was no limitation upon the right of an engineer member of the Brotherhood of Locomotive Firemen and Enginemen to have the committee of his Organization represent him in handling the case, under the recognized interpretation of the rule applying to his case." (Emphasis supplied, except as indicated).

In a preceding case, In re Brotherhood of Locomotive Engineers, Order of Railway Conductors, etc., another Emergency Board appointed May 26, 1936, in recommending that the two Brotherhoods compose their differences, held

"The right of each organization to represent its members, in whatever capacity employed, must be conceded where representation in-

volves disputes arising under rules or working conditions; the rules in effect for the class of employees and the interpretations placed thereon by the negotiating organization and the carrier will govern."

We hold that so far as concerns an engineer member of the Firemen's Brotherhood, the district court's interpretation of Astiele 51, Section 1 of the Firemen's Schedule, that the Firemen's Committee may be his representative in the arbitration of his individual grievances under the provisions of the Act, is correct; and affirm its judgment to that effect.

B. The district court declared that certain provisions of the Firemen's Schedule did not regulate the engineers in the exercise of their certit, but were merely conditions to the entry of denoted ongineers into their employment of discount. The Engineers' Committee asserts error in that these provisions do so regulate the craft of engineers in the exercise of their craft, has were increby conditions to the entry of demoted engineers into their employment of firemen. The Engineers' Committee asserts error in that these provisions do so regulate the craft of engineers and hence constitute a bargaining by the Bailway with a representative other than one chosen by a majority of the engineers' craft.

It appears that the provisions of the Firemen's Schedule, of which the Engineers' Committee complain, are identical with those of the Engineers' Schedule. Whether or not the Firemen's Committee was authorized so to contract, exactly the same men will be employed in the engineers' and firemen's crafts and have exactly the same duties and compensation as would be the case if these provisions had not been included in the Firemen's Schedule. The question then suggests itself, whether, granting the Engineers' claim of lack of authority in the Firemen's Committee, the criticized provisions, so far as concerns the engineers, constitute a matter damnum absque injuria and do not present the "actual controversy" required by the declaratory judgment act, 28 U.S. C. A. 400, 48 Stat. 955.

We are of the opinion that the controversy is an actual one over the right of the Railway to contract at all with the Firemen's Committee. In the case of Virginian Railway Co. v. System Federation, supra, the Supreme Court held the railway employer could be enjoined from making any contract concerning craft conditions with a minority representative of the men of that craft. It was nowhere contended that the contract when made would wrongfully affect the craft as a whole, or that it would be different from that of the majority representative. The injunction was against dealing with the minority committee, whatever might

^{7&}quot;Both the statute and the decree are aimed at securing settlement of labor disputes by inducing collective bargaining with the true representative of the employees and by preventing such bargaining with any who do not represent them." (Emphasis supplied.)

be the resultant contract. If such action may be enjoined, a declaratory judgment on the right to enjoin such action may be had.

The judgment declared that the Firemen's Committee was authorized to make certain provisions of the Firemen's Schedule relative to the employment of firemen who have been engineers and of engineers who have been firemen. It is obvious that so far as the district court's interpretation of the Schedule is concerned, if it does not unlawfully affect the rights of appellant, appellant cannot complain that the words of the agreement appear to have another meaning, and that if so interpreted it would violate appellant's rights.

Parties to a written agreement may stipulate for a declaratory judgment that, so far as concerns, the relations created thereby, wherever the word "one" is used in the agreement it means the word "five," and another person claiming to be affected by the contract, who is a party to the proceeding, cannot complain if by the substitution of the word "five" for the word "one" he is not adversely affected. The non-adverse interpretation becomes res judicata between the third party and the two contracting parties. Hence, here, this court need concern itself, only with the question whether a certain interpretation of provisions of the Firemen's Schedule made by the judgment adversely affects the appellant.

The district court has made an interpretation of Article 43 of the Firemen's Schedule, entitled De-

motions and Lost Runs and an addendum thereto, on which both contracting parties, the Firemen's Committee and the Railway, are agreed. The interpretation was made in a finding, number 11. (a), which was not incorporated in the judgment, but which the Firemen's Committee and the Railway stipulated should be there incorporated. We order the judgment amended by the insertion of the interpretation stated in finding 11. (a) at the end of paragraph b, of the judgment, as follows:

(b) 1. The provisions of Article 43, sections 1, 2, 3, 4 and 6, and the Addendum of Article 43, Application of Mileage Regulations to Part-Time Men, of the Firemen's Agreement, were and are intended to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is intended to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or minimum miles or hours.

The effects of that interpretation and its agreed acceptance by the parties to the contract is shown by the insertion of the bracketed matter in Section 1. Article 43. As so interpreted, the pertinent portions of the Article read

"Article 43

Demotions and Lost Runs

"Sec. 1. When, from any cause, it becomes necessary to reduce the number of engineers on' the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions: [Including Sections 2, 3, 4 and 6 below]

First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

Second: That when reductions are made they shall be in reverse order of seniority.

- Sec. 2. When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services are required.
- Sec. 3. Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the

equivalent of 4800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3800 miles per month.

Sec. 4. In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage, or equivalent thereof, within the limitation of 4000 and 4800 miles for passenger and 3200 and 3800 miles for other regular service, as provided herein. If, in any service, additional assignments would earnings below these limits, regulation will be effected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached. On road extra list; sufficient engineers will be maintained to keep the average mileage, or equivalent thereof, between 2600 and 3800 miles per month; provided that when engineers are cut off the working list and it is shown that those on the extra lists are averaging the equivalent of 3100 miles per month, engineers will be returned to the extra lists if the addition will not reduce the average mileage, or the equivalent thereof, below 2600 miles per month.

Where separate extra lists are maintained for yard service; sufficient engineers will be maintained to keep the average earnings between 26 and 35 days per month; provided that when engineers are cut off the yard working

list and it is shown that men are averaging the equivalent of 31 days per month, engineers will be returned to service if the addition will not reduce the average earnings below 26 days per month.

Note: As to mileage regulations affecting part-time men, see addendum to Article 43, pages 118-119-120.

Sec. 5 * * *

*8An addendum to this Article reads

"We understand also from your conversation with respect to part-time men, whether they be engineers and firemen or conductors and trainmen, a sound and practical basis for adjustment would be to permit each organization to regulate the conditions of the part-time man during the time that these men are employed at the occupation covered by such organization. Thus if the mileage limitation on any road was 3300 miles for firemen and 3800 miles for engineers, a man in freight service making 1500 miles as a fireman, then used as emergency engineer for 500 miles, would be permitted to make sonly 1300 additional miles as a fireman; or a man making 2000 miles as an extra engineer who . is cut off the engineer's extra board, would be permitted to make only 1300 additional miles as a fireman. On the other hand, a fireman who has made his maximum mileage of 3300 miles and has been taken off on that account, might be used as an emergency engineer or go on the engineer's extra

The appellant claimed below that Sections 2, 3, 4 and 6, as drawn, are not such conditions, but direct attempts to prescribe mileage and other provisions of the employment of engineers. The Railway and the Firemen's Brotherhood agree that they were solely conditions of engineers' entry into and their employment as firemen, and do not control engineer employment. Since this judgment so declaring the

board for the remainder of the month to make the additional 500 miles up to 3800 in accordance with

the engineers' mileage limitation.

"We understand from the discussions also that nothing in such a regulation of the part-time men would prevent any organization from regulating the mileage of its own men by adjustment at the end of each month or checking period, in order to offset any excess mileage that an individual may have made. That is to say, if a trainman had made 400 extra miles as an emergency conductor in any one month or checking period, and if at the end of that month or checking period he was working as a trainman, the trainmen's organization would have authority to regulate him to bring his mileage within the trainmen's limitation. If, on the other hand, the man was working as a conductor at the end of the month or checking period, he would be subject to the regulation of the conductors' organization. The point, as we understood it, was that each organization would be free to make adjustment for excess mileage of the men under its jurisdiction to bring them within the mileage limitations set by that organization. And the fact as to whether a man was subject to the jurisdiction of one organization or another would be established by the craft that he was working in at the end of the month or checking period."

meaning of Sections 2, 3, 4 and 6 is res judicata as between the Firemen's craft and the Railway on the one hand, and the Engineers' craft on the other, the Engineers' Committee cannot claim that there was error in the interpretation.

If error, it was not prejudicial, for the interpretation in effect is that which the Engineers Brotherhood claims, namely, "that Sections 2, 3, 4 and 6 of Article 43 of the Firemen's Agreement shall be limited in their application to conditions. under which demoted engineers enter, remain in. and leave the firemen's craft, and that said sections * * * [are] invalid-in so far as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to engineers' working lists, whether in passenger, freight, or extra service." This, of course, is subject to the right of the individual craftsman to make such a contract with the Railway as they may agree upon. as recognized in the Virginian Railway case, supra.

The judgment holds that the following interpretative questions and answers in Article 37 of the Firemen's Schedule are valid and do not infringe any right of the Engineers' craft.

"Article 37.

Section 15. * * •

"Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineer's extra list is exhausted, who should be called?

Answer: (a) The senior available qualified man in accordance with his seniority as engineer.

(b) Should a senior demoted engineer holding assignment as fireman become available [as engineer] after man used [as engineer] under (a) returns to terminal or completes day's

work, who should be used?

(b) The senior available man."

It is obvious that the answers may control the conditions under which one then a fireman may be employed as an engineer. While the Firemen's Committee and the Railway well may provide who may become subject to the Firemen's craft regulations, neither has the power to say that a fireman may not quit his employment in that craft if he so desires. The Railway also may agree with the Engineers' craft as to conditions under which one may be employed as an engineer, whether then or formerly employed as a fireman. It is our opinion that the Act contemplates that the cleavage of the powers of the firemen and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other.

The Firemen's Brotherhood claims such a cleavage fails to recognize what it calls the "ebb and flow" of men between the two crafts, The Supreme Court has held that all the employees of the

two crafts do not necessarily so ebb and flow. All the parties are in accord that there is no closed shop agreement with regard to either craft, as there cannot be in view of the Virginian Railway case, supra. Hence, the Railway may employ as engineer an engineer just from the Guatemalan Central Railway. He would not have flowed out of the Southern Pacific Railway's firemen and hence not ebb back into them.

'However, the so-called ebb and flow of a large part of the men of the two crafts existed and was a matter of general notice when Congress passed the Railway Labor Act and its amendments. Instead of providing for such control of the ebb and flow as the Firemen's Brotherhood claims, it gave to each craft the control of its members so far as concerns craft conditions. If it had intended to limit the entry into the craft of engineers to promotion from the craft of firemen, it could have made it plain in the Act. The absence of such a provision, in view of the existing ebb and flow, is significant.

Instead, as held in the Virginian Railway case, either the individual fireman or engineer may make such a contract with the Railway as he pleases, regardless of the ebb and flow. If the Firemen's Brotherhood would secure such subservience of the engineers and such dominion over the movement of men between the two crafts as it claims, namely, the right to control what it calls the "promotion" into the engineers, as well as the "demo-

tion" of engineers into the firemen, it should seek from Congress an amendment to the Act with respect to the right of each craft to control the conditions of its members' employment. Or, to pursue the suggestion made at the hearing by the Firemen's Brotherhood's experienced counsel, Congress might consider legislation that the functions of firemen and engineers are those of a single craft, and, hence, make advisable the combination of the two Brotherhoods into one.

We agree with the contention of the Engineers' Committee that the judgment erred with respect to the interpretation of the questions and answers of Article 37, Section 15, and order stricken from Section b. of the judgment the words "Article, 37, section 15, Questions and Answers," and that there be added to the judgment the following paragraph, succeeding paragraph b. (1).

b. (2) The Questions and Answers of Article 37, Section 15, are under the Railway Labor Act valid only in so far as they relate to their rights of firemen as such under said section. They are invalid under said Act in so far as they relate to entry of a fireman into the craft of engineers.

The judgment appealed from, amended as above provided, is affirmed.

[Endorsed]: Opinion. Filed Nov. 13, 1942. Paul P. O'Brien, Clerk.*

As amended by order of Jan. 22, 1943.

United States Circuit Court of Appeals for the Ninth Circuit

No. 9991

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMO-TIVE ENGINEERS FOR THE PAC. LINES OF SO. PAC. CO.,

Appellant.

VS.

SOUTHERN PACIFIC COMPANY, et al., Appellers,

DECREE

Appeal from the District Court of the United States for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, Southern Division, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be and hereby is amended by striking from Section b. of the decree the words "Article 37, section 15, Questions and Answers," and by adding to the decree the following paragraph, succeeding paragraph b.(1.)

b.(2) The Questions and Answers of Λr_{\parallel} ticle 37, Section 15, are under the Railway Labor Act valid only in so far as they relate to their rights of firemen as such under said

section. They are invalid under said Act in so far as they relate to entry of a fireman into the craft of engineers.

and, as so amended, the decree be, and hereby is affirmed, with costs in favor of the appellees, and against the appellant.

It is further ordered, adjudged, and decreed by this Court, that the appellees recover against the appellant for their costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered Nov. 18, 1942. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Friday, January 22, 1943.

Before: Denman, Haney and Healy, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING MODIFICATION OF OPINION AND DENYING PETITION FOR REHEARING.

By direction of the Court, Ordered that the type-written opinion rendered and filed on November 13, 1942, be amended pursuant to the order this day filed.

Upon consideration of the petition of appellant, filed December 11, 1942, and within time allowed

therefor by rule of court, for a rehearing of above cause, and of the reply of Brotherhood of Locomotive Firemen and Enginemen to appellant's petition for rehearing, filed December 28, 1942, and of the reply of appellant, filed January 15, 1943, and by direction of the Court, It Is Ordered that said petition for rehearing be, and hereby is denied.

[Title of Circuit Court of Appeals and Cause.]

ORDER STAYING ISSUANCE OF .MANDATE

Upon joint application of Mr. George M. Naus, and Mr. Lawrence F. Kuechler, counsel for the respective parties, and good cause therefor appearing. It Is Ordered that the issuance, under Rule 28, of the mandate of this Court in the above cause be, and hereby is stayed to and including March 1, 1943; and in the event the petition for a writ of certiorari to be made by either of the parties herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date; then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

WILLIAM DENMAN,

United States Circuit Judge.

Dated: San Francisco, California, January 27, 1943.

[Endorsed]: Filed Jan. 28, 1943.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UN-DER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing three volumes consisting of eight hundred twenty-nine (829) pages numbered from and including 1 to and including 829, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel of the appellant, and certified under Rule 38 of the Rayised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Nintle Circuit, at the City of San Francisco, in the State of California, this 23d day of February, 1943.

[Seal] PAUL P. O'BRIEN,

Clerk

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1943

No. 27

ORDER ALLOWING CERTIORARI-Filed May 24, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted: Counsel are requested to discuss in their briefs and on oral argument the following questions, so far as applicable in each case:

- (1) whether resort to the declaratory judgment procedure is appropriate in the circumstances;
- (2) whether any questions of the construction of the contracts involved are governed by state or by federal law:
- . (3) what bearing, if any, the Norris-La Guardia Act has con the propriety of granting the relief sought:
- (4) in No. 937, whether the district court had jurisdiction to review the certification of the Board.

The Solicitor General is requested to file a brief amicus curiae, and if he so desires to participate in the oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ. SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1943

No. 41

ORDER ALLOWING CERTIORARI-Filed May 24, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. Counsel are requested to discuss in their briefs and on oral argument the following questions, so far as applicable in each case:

- (1) whether resert to the declaratory judgment procedure is appropriate in the circumstances;
- (2) whether any questions of the construction of the contracts involved are governed by state or by federal law:
- (3) what bearing, if any, the Norris-La Guardia Act
- (4) in No. 937, whether the district court had jurisdiction to review the certification of the Board.

The Solicitor General is requested to file a brief amicus euriae, and if he so desires to participate in the oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ. No. 345

In the Supreme Court

OF THE

Anited States

OCTOBER TERM, 1942

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY (an unincorporated association),

Pétitioner.

VS.

Southern Pacific Company (a corporation) and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (an unincorporated association).

PETITION FOR A WRIT OF CERTIORARI
to the United States Circuit Court of Appeals, Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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Attorney for Petitioner ..

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Cleveland, Ohio,

Of Counsel.

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In the Supreme Court

OF THE Haited States

OCTOBER TERM, 1942

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY (an unincorporated association),

Petitioner.

VS.

SOUTHERN PACIFIC COMPANY (a corporation) and GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (an unincorporated association).

PETITION FOR WRIT.

May it please the Court:

The undersigned on behalf of General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above-entitled cause, numbered therein No. 9991.

OPINION BELOW.

The opinion of the court below (R. 792) is reported in 132 F. (2d) 194. There was no opinion in the District Court (Northern District of California).

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered November 13, 1942 (R. 791). A petition for rehearing was seasonably made and entertained, and denied, with modification of opinion, on January 22, 1943 (R. 828-829).

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U.S.C. § 347).

STATEMENT.

Respondent Southern Pacific Company is a "carrier" within the meaning of § 1, First, of the Railway Labor Act. (Findings 1 and 2, R. 44.)

The locomotive engineers in the carrier's employ comprise a separate "craft or class of employes" (Finding 4, R. 45) as that phrase is used in the Act, including its use in § 2, Fourth, viz.

"The majority of any craft or class of employes shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

For many years before the passage of the Act and ever since petitioner General Committee of, Adjustment (hereinafter called "Engineer's Brotherhood") has been the representative designated by the majority of the craft or · class of locomotive engineers, and has collectively negotiated and entered into, with the carrier, agreements (hereinafter called "Engineer's Schedule") concerning rates of pay, rules and working conditions of the craft (Findings 4 and 5, R. 45 and 46; Engineer's Schedule printed at R. 326-467). Similarly, in respect to the separate craft of locomotive firemen, respondent General Grievance Committee (hereinafter called "Firemen's Brotherhood!') is the majority representative thereof, and has concurrently had a collective agreement, hereinafter called "Firemen's Schedule" (Findings 4 and 5, R. 45, 46 and 47; Firemen's Schedule printed at R. 468-636.)

The memberships of the two brotherhoods overlap; most of the locomotive engineers are members of one Brotherhood or the other, some are members of both; and a few of neither (Finding 3, R. 45); i.e., Firemen's Brotherhood has in its membership a minority of the craft or class of locomotive engineers.

The last Firemen's Schedule collectively entered into by the craft of firemen with the carrier (R. 468-636), printed and published June 1, 1939, was the first Firemen's Schedule printed and published by Firemen's Brotherhood subsequent to the decision by this Court on March 29, 1937, of Virginian Ry. Co. v. System Federation No. 40, 300 U.S. 515. It contained the following Article (R. 6; Finding 5, R. 46-47; R. 468, at 616):

"Adjustment of Differences

"Sec. 1. The right of any engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded. " ""

The inclusion of the word "engineer" therein was the subject of protest by Engineer's Brotherhood to the carrier, R. 177, and the subject of controversy between the two Brotherhoods, R. 208. There was an actual controversy between petitioner Engineer's Brotherhood, on one side, and the carrier and Firemen's Brotherhood, on the other, as to the validity of that inclusion in Article 51, section 1, quoted supra (Finding 17, R. 54-55), forming the basis of the Engineer's complaint for 'declaratory relief (R. 2-13), praying a declaration of rights and legal relations and further relief. (R. 13.)

The Court below affirmed a declaration and decree (R. 55-57) of the District Court that the inclusion of the word "engineer" in Article 51, section 1, supra, in the Firemen's Schedule is valid.

Subsidiary thereto, the Court below affirmed a companion declaration and decree (Conclusion 2, R. 55; Decree 5, R. 56) that Firemen's Brotherhood (although designated by only a minority of the craft of engineers) "is not precluded by the Railway Labor Act, or otherwise" from handling individual grievance claims "arising out of any engine employment, including employment as engineer", i.e., grievance claims arising and asserted under the Engineer's Schedule.

QUESTIONS PRESENTED.

The questions presented are:

- 1. Is the inclusion of the word "engineer" in Article 51, section 1, of the Firemen's Schedule a violation of the exclusive right of petitioner Engineer's Brotherhood to represent the craft or class of locomotive engineers as the representative designated by the majority of that craft or class under the Railway Labor Act?
 - 2. Has any representative other than petitioner Engineer's Brotherhood, designated by the majority of the craft, a right to present and represent grievance claims under the Act in the case of any individual member of the craft of locomotive engineers who desires to proceed through a representative in presenting and prosecuting a grievance claim under the adjustment machinery of the Act!

REASONS FOR GRANTING THE WRIT.

1. The decision of the Court belowedeals with questions of great public importance, not merely with respect to labor relations on the line of the Southern Pacific, but nationwide, affecting employment on practically every line of railway; and not employment of engineers and firemen only, but employment in all organized crafts of railway employes.

- 2. The decision of the Court below conflicts in principle with the decision of this Court in Virginian Ry. Co. v. System Federation No. 40, 300 U.S. 515, wherein the principle is laid down (300 U.S. at 548) that the right of the majority representative of a craft is exclusive, and that the carrier is under a negative duty not to negotiate, "treat", with a minority union.
- In the well-known case under the Wagner Act. National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, this Court clearly pointed out that the "majority rule" provisions of the Wagner Act, & 9(a). came from the earlier provision in the Railway Labor Act, as amended in 1934. The exclusive right of the majority representative is identical under both Acts. The decision of the Court below therefore conflicts with (a) the nationwide rule under the Wagner Act in non-railway employment, first applied in Matter of Mooresville Cotton Mills. 2 N.L.R.B. 952, 955 (and adhered to ever since by the Board, Rosenfarb, National Labor Policy, p. 195), i.e., that an employer may not negotiate with a minority representative of a minority member of a craft in respect to an individual grievance within the scope of the collective agreement governing the craft; and with (b) the approval of that ruling by the Circuit Court of Appeals." for the Fourth Circuit in Mooresville Cotton Mills v. National Labor Relations Board, 94 F. (2d) 61, at 65, col. 1; and with (c) rulings in the State Courts: Bloedel Donovan Lumber Mills v. International Woodworkers of America, 4 Wash. (2d) 62, 72; Dooley v. Lehigh Valley R. R. Co., 130 N. J. Eq. 75, affirmed in 131 N. J. Eq., 468, certiorari denied, October Term, 1942, No. 207 (87 L. Ed. 38), sub. nom. Lehigh Valley R. Co. v. Dooley.

Wherefore, it is respectfully submitted that this petition for writ of certiorari should be granted, to review those portions of the judgment of the Court below embraced within the Questions Presented, supra.

Daed, San Francisco, California, March 17, 1943.

GEORGE M. NAUS,

Attorney for Petitioner.

CLARENCE E. WEISELL,

(HORN, WEISELL, McLAUGHLIN & LYBARGER),

Of Counsel.

BRIEF IN SUPPORT OF THE PETITION.

OPINION BELOW.

Stated in the Petition, supra.

JURISDICTION.

Stated in the Petition, supra.

STATUTE INVOLVED.

The Railway Labor Act of May 20, 1926, as amended June 21, 1934, c. 691, 48 Stat. 1185, U. S. C. Title 45, §§ 151-163. Because of their length, we quote relevant portions in our Appendix hereto.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred (in that branch of the decision under the Court's heading "A", R. 793 to 815):

- (1) In holding that the inclusion of the word "engineer" in Article 51, section 1, of the Firemen's Schedule does not violate the exclusive right of petitioner Engineer's Brotherhood to represent the craft or class of locomotive engineers, as the representative designated by the majority of that craft or class under the Railway Labor Act.
- (2) In holding that an individual member of the craft who elects to prosecute an individual grievance claim

under the adjustment machinery of the Railway Labor Act, through a representative, may do so through a representative not designated by the majority of the craft.

ARGUMENT. .

1. THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT THE INCLUSION OF THE WORD "ENGINEER" IN ARTICLE 51, SECTION 1, OF THE FIREMEN'S SCHEDULE DOES NOT VIOLATE THE EXCLUSIVE RIGHT OF PETITIONER ENGINEER'S BROTHERHOOD TO REPRESENT THE CRAFT OR CLASS OF LOCOMOTIVE ENGINEERS, AS THE REPRESENTATIVE DESIGNATED BY THE MAJORITY OF THAT CRAFT OR CLASS UNDER THE RAILWAY LABOR ACT.

The effect of the inclusion of the word "engineer" in the Firemen's Schedule, Article 51, section 1, "Adjustment of Differences", is that the carrier and a minority brotherhood have collectively contracted with respect to the craft or class of locomotive engineers in violation of the exclusive right of petitioner, the representative designated by the majority of the craft. This Court held in Virginian Railway Co. v. System Federation, 300 U. S. 515, 548, that the provisions of the Railway Labor Act giving to the employees the right to organize and bargain collectively through the representative of their own selection gave an exclusive right to the majority of the craft, and imposed the affirmative duty upon the carrier to treat only with the true representative of the craft and hence the negative duty to treat with no other. It appears that the Court below turned decision upon a misconception of the ruling of this, Court in the Virginian Railway Co. case concerning the matter of individual hirings. The decree in the Virginian Railway case as construed by this Court

was said not to preclude "such individual contracts as [the carrier] may elect to make directly with individual employees". (300 U.S., at 549.) Hirings of craft members are individual on all railroads, and when there is no craft schedule the carrier and the individual member may embrace in the contract of hiring any terms whatever as to rates of pay, rules and working conditions, or they may be governed by unilateral announcement by the carrier: (Accord, Williams v. Jacksonville Terminal Co., 315 U. S., at 386, 402.) Whether a genuine collective contract existed in the Virginian Railway case, the purported contract having been made with a company union, is at least open to question. We submit that the statements in the Virginian Railway Co. case concerning individual contracts are not to be construed to mean that where there is a true collective contract governing rates of pay, rules and working conditions of the craft, the carrier may also make individual contracts of hire with its employees on terms different from those contained in the collective agreement.

But whatever was said by this Court in the Virginian Railway case about individual contracts can lend no support to the inclusion of the word "engineer" in the Firemen's Schedule, because that Schedule is not a contract between the carrier and an individual but between the carrier and a minority representative collectively representing a small minority of engineers. The decree in that case directed the carrier to "treat with" the true representative of the majority of the craft and not to treat with a representative other than the true one, and enjoined it from entering into any collective agreement with a representative other than the respondent, the true representative. The case is, accordingly, direct authority

for striking the word "engineer" from the Firemen's Schedule because, equally with the *Virginian Railway* case, the record here discloses that the Firemen's Brotherhood is *not* the true representative of the craft of engineers.

The question of who may be the representative of employes "is and always has been one of the most important of the rules and working conditions in the operation of a railroad", *Pennsylvania R. R. Co. v. U. S. R. R. Labor Board*, 261 U. S. 72, 83.

Under the Act, § 2, Fourth, the majority of the craft may designate the exclusive representative of the craft; and in § 2, Eighth, it is provided that the provisions of § 2, Third, Fourth and Fifth "are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them". Majority rule therefore becomes a part of each individual hiring, and accordingly the Congress in the exertion of its power over commerce has forbidden the carrier and minority representative Firemen's Brother-hood from contracting about "engineers". We find utterly inexplicable the astonishing assertion (R. 796) in the opinion of the Court below, viz.:

"Under the decision of Virginian Railway Co. v. System Federation, supra, the engineer could have made an employment agreement with the Railway that he was to have the same rates of pay as those of the schedule of a British railway."

2. THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT AN INDIVIDUAL MEMBER OF THE CRAFT WHO ELECTS TO PROSECUTE AN INDIVIDUAL GRIEVANCE CLAIM UNDER THE ADJUSTMENT MACHINERY OF THE RAILWAY LABOR ACT, THROUGH A REPRESENTATIVE, MAY DO SO THROUGH A REPRESENTATIVE NOT DESIGNATED BY THE MAJORITY OF THE CRAFT.

A. We may assume that the individual engineer may alone decide whether a claim is to be asserted, i. e., that he may waive his individual claim or grievance if he wills, *Illinois Central R. Co. v. Moore*, 5 Cir., 112 F. (2d) 959, 965.

We may further assume that use of the adjustment machinery of the Railway Labor Act is voluntary, not compulsory, i. e., that it is always open to the individual engineer to elect instead to bring suit in a Court as a party plaintiff in complete control of his own suit, *Moore v. Illinois Central R. Co.*, 312 U. S. 630, 634-636.

We may further assume that the individual engineer, through any representative he may individually select, may handle an individual claim or grievance as to any matter outside the statutory scope of the collective agreement or Engineer's Schedule, which scope under § 2, First, and § 3, First, (i) embraces "agreements concerning rates of pay, rules, and working conditions". Illustrations are found in personal injury caused by an unsafe place to work or negligence of the carrier, matters of statutory duty and the like.

We may leave open, as was done in Bloedel Donovan.

Lumber Mills v. International Woodworkers of America,

4 Wash. (2d) 62, 72, the question whether the individual

engineer may, without the use of any representative, personally handle his own case.

We come, then, to our parrowed contention, and it is this: Since the locomotive engineers comprise a separate craft or class of employees, within the meaning of the Railway Labor Act, and since the majority of that craft or class have designated Engineer's Brotherhood as the representative of the craft or class for the purposes of the Act, § 2, Third, and Fourth (second sentence), it follows that when members of the craft voluntarily elect to use the procedural machinery provided by § 3. First (National Railroad Adjustment Board) for the adjustment of individual claims or grievances that develop from the interpretation or application of the collective agreement between the carrier and Engineer's Brotherhood, the latter is the sole and exclusive representative of the members of the craft, and minority members of the craft who elect to take the adjustment benefits of the Act must take the benefits cum onere; therefore they may not use Firemen's Brotherhood nor any other minority representative in the pursuit of an adjustment under the machinery of the Act.

The body of decided cases while small is uniformly to the effect that a minority craft member complaining of an individual grievance within the scope of the collective agreement governing the craft may not be represented as to such a grievance by a minority representative such as Eiremen's Brotherhood here: Matter of Mooresville Cotton Mills, 2 N. L. R. B. 952, 955; Mooresville Cotton Mills v. N. L. R. B., 4 Cir., 94 F. (2d) 61; Bloedel Donovan Lumber Mills v. International Woodworkers of America, 4 Wash.

(2d) 62, 72; Dooley v. Lehigh Valley R. R. Co., 130 N. J. Eq. 75, affirmed in 131 N. J. Eq. 468, cert. den. (87 L. Ed. 38).

Since the decision of the Court below, the Attorney General, Honorable Francis Biddle, on December 29, 1942, gave a written opinion to the President, under the Railway Labor Act, wherein it was stated inter alia:

"it is as important that there be collective action on the part of employees in the negotiation of settlements of grievances as it is that there be collective action in the negotiation of the provisions of the collective bargaining agreement which relate to wages, hours, and other conditions of employment. Disputes about grievances normally require interpretations of these latter provisions. Even when this is not the case, all members of the class or craft to which an aggrieved employee belongs have a real and legitimate interest in the dispute. Each of them, at some later time, may be involved in a similar dispute."

We adopt that statement as argument here.

There are impelling reasons why the representation of grievances involving claims under a schedule may be lodged exclusively with the representative who has made the schedule agreement. Representation of such grievances is clearly within the purview of the Act. Representation by a representative other than the one who makes and interprets the schedule tends to circumvent, frustrate, or defeat the proper settlement of such grievances and the maintenance and enforcement of the schedule negotiated by the majority, and thereby to defeat the purposes of the Act. It opens wide the door to an employer

to indulge in disproportionate treatment, favoritism and discrimination (cf. as to an organized group and an unorganized remainder within a craft or class, N. L. R. B. v. Wilson Line, 122 F. (2d) 809, 812, col. 2).

Each decision upon a claim arising under a schedule has an effect upon the interpretation or application of the schedule. By § 3, First, (m), awards of the Adjustment Board must be in writing, and "the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award". The decisions upon prior analogous claims amount to what may be called the "common law" of schedule interpretation. Such decisions are cited and argued by the representative and manifestly carry much weight in the application of the schedule to a pending claim.

It is therefore of great importance to the craft representative that it shall have the right to handle all claims (where representation is desired) which thus affect the application and enforcement of the schedule. A minority representative, under the decision of the Court below, may interpret the schedule contrary to the interpretation of

The National Railroad Adjustment Board has repeatedly recognized this fact. In the following illustrative decisions of the National Railroad Adjustment Board, First Division, the awards were based upon the following findings:

Award No. 534. "The settlements made under the rules involved support of the employees' contention."

Award No. 571. "'Under settlements on this property claim is supported."

Award No. 837. "On the basis of previous settlements by the carrier in connection with the rule in question, the employees' contention in this particular case is supported."

Award No. 4992. "The prior settlements on this railroad, involving similar claims, warrant an affirmative award."

the craft representative, and settle a case in conformity. with such unrecognized interpretation. An illustration of this practice is shown by Exhibit 11 (R. 311), where the Firemen's Brotherhood compromised a claim for one-half of the amount appearing due under the Engineer's Schedule. A compromise by which a claim is settled for onehalf of its value is not a settlement in accordance with the "recognized interpretation" of the Engineer's Schedule. Such a practice plainly undermines the enforcement of the schedule; it tends to destroy the "recognized interpretation" by making an exception to it; it violates the Engineer's Schedule rule, Article 32, Section 22 (R. 452), that the controversy "will be handled in accordance with the recognized interpretation"; and it undercuts the authority of the craft representative to interpret and enforce its own rule. To accede to the right of a minority representative to make such settlements in one case is to concede it in all cases, with the result that many or all cases might be so compromised by a minority. If the carrier finds that it can settle claims on a more favorable basis with the minority representative than with the craft representative, as in the instance illustrated by Exhibit 117 (R. 311), it will naturally make known its preference for dealing with the former. It will thus play one organization against the other, and one interpretation against another. Concessions made by the minority representative will call for concessions by the craft representative, and thus a premium will be placed upon compromise rather than upon strict enforcement. Thereby the full benefits of the schedule are frittered away and lost to the craft.

There is no more room for dual representation in the presentation of grievances arising under a schedule than

there is for "pluralism" in the making of a schedule. If such dual representation is permitted, there will be constantly recurring disputes, and the Act will fail of its purpose as "an instrument of peace rather than of strife". (T. & N. O. R. Co. v. Ry. Clerks, 281 U. S. 548, 570.) The whole purpose and intent of the statute is to settle such controversies in the selection of the craft representative and thereafter to constitute this representative as the sole spokesman and bargaining agent of the craft.

B. Findings 7 and 8 about a "usual manner" of handling "individual claims and grievance cases" is in reality but a misplaced and erroneous legal opinion that endeavors to disregard the dominant purposes of the Act and place an insupportable weight upon the phrase, "the usual manner", in § 3 First, (i), which we quote:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay; rules, or working conditions "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

The history and purpose of the provision are clear:

"The purpose of this salutary provision is to require the parties, before seeking the assistance of the

government, to exhaust their own resources in an attempt to settle labor disputes."

Spencer, The National Railroad Adjustment Board (Studies in Business Administration, Univ. Chicago, April 1938).

"Throughout its career the [Railroad Labor] Board [under the Transportation Act of 1920, 45 U. S. C. A. § 135] held steadfastly to this rule and refused to entertain any application for a hearing until this procedure has been complied with."

Wolf, The Railroad Labor Board (University of Chicago Press, 1927), p. 351.

There must be an exhaustion of negotiating effort to settle disputes, i. e., they "shall be handled in the usual manner up to and including the chief operating officer of the carrier". "Manner" merely relates to method of exhaustion.

The phrase, "handled in the usual manner", was originated in the United States Railroad Administration of 1918 and 1919. Prior thereto, under private control of railroads, the chief operating officer on each railroad had the last word upon individual grievances and disputes unless a strike was called. His decision was a final decision. That finality of decision was taken away when the Government took control of the railroads, under the Director General's General Order No. 8, which ordered inter alia:

"Matters of controversy arising under interpretations of existing wage agreements and other matters not relating to wages and hours will take their usual course, and in the event of inability to reach a settlement will be referred to the Director General." Appellate machinery for review of the chief operating officer's decision was needed. On March 22, 1918, bipartisan Railway Board of Adjustment No. 1 was created by General Order No. 13, covering the four engine and train service Brotherhoods. In giving appellate jurisdiction from decisions of chief operating officers on particular railroads, the following language was used therein interalia:

"10. Personal grievances or controversies arising under interpretation of wage agreements, and all other disputes arising between officials of a railroad and its employes, covered by this understanding will be handled in their usual manner by general committees of the employes up to and including the chief operating officer of the railroad "."

Under identical texts, General Orders 29 and 53 created Boards Nos. 2 and 3 for other of the organized crafts that held schedules or collective agreements. There was a residue of employes in crafts either unorganized or holding no collective agreement. They were covered by the Division of Labor's Circular No. 3 of August 30, 1918. As to them, it was provided inter alia that grievances or controversies "will be handled in the usual manner by the individual, his representative, or by committees of employes, up to and including the chief operating officer of the railroad", before right of appeal to the Division of Labor.

Thereafter, the Director General promulgated General Order No. 65, reading:

"Grievances affecting employees belonging to classes which are or will be included in national agree-

ments which have been, or may be, made between the United States Railroad Administration and employees' organizations will be handled as follows:

- (a) Grievances on railroads not having agreements with employees, which grievances occurred prior to the effective date of any national agreement, will be handled by railroad officials in the usual manner with the committees and officials of the organizations affected, for final reference to the Director of. Labor as provided in Circular No. 3 of the Division of Labor. Grievances on railroads having agreements with employees, which grievances occurred prior to the effective date of any national agreement, will be handled by railroad officials in the usual manner with the committees and officials of the organizations with which the agreement was made, for final reference to Railway Boards of Adjustment, as provided in general orders creating such Boards. Decisions made as the result of such reference will apply to the period antedating the effective date of such national agreement and from the effective date of that agreement . will be subject to any changes that are brought about by the national agreement.
- (b) Grievances which occurred on the effective date of any national agreement, and subsequent thereto, will be handled by the committees of the organizations signatory to such national agreements, for final reference to the appropriate Railway Board of Adjustment, except on roads where other organizations of employees have an agreement with the management for the same class of employees, in which case grievances will be handled under that agreement by the committees of the organization which holds the agreement, for final reference to the Director of Labor as provided in Circular No. 3 of the Division of Labor."

From the foregoing history it is clear that the phrase "usual manner" relates solely to method, not to persons. It is addressed solely to exhaustion of intramural negotiating effort on the particular railroad, before an adjustment appeal "off the property"; It does not identify who, for the employes, shall negotiate. Until the adoption of majority rule, the employer could negotiate with any and all groups, majority and minority. However, the 1934 Act had different sponsorship (Federal Coordinator of Transportation), and majority rule became the law. Majority representation means exclusive representation. There must still be handling in the "usual manner", i. e., exhaustion of negotiating effort on the particular railroad, through the hierarchy of carrier officers up to the chief operating officer. That handling in the "usual manner" must be, since, 1934, by the majority representative of the craft, the exclusive representative. In its origin in General Order No. 13 creating Railway Board of Adjustment No. 1 for the train service crafts (engineers, firemen, conductors, brakemen) the phrase "handled in the usual manner" was immediately followed by the words, "by general committees". Repetition occurred in General Orders 29 and 53 creating Boards No. 2 (shop and mechanical) and No. 3 (telegraphers, clerks, et al.). When one comes, however, to the residue of crafts either unorganized or freshly in organization throes and yet without Schedules. "manner" or procedural method, i. el. exhaustion of negotiating effort on the property, is the same: the phrase remains, "handled in the usual manner". but the consequence of that antecedent becomes, "by the individual, his representative, or by [n. b., not a brotherhood 'general committee' but simply in the ordinary

sense: committees of employees". The point, demonstrably clear, is that "manner" does not determine who, for the employes, shall "handle". And that origin and history has one further teaching: it shows the embryoof exclusive majority rule, in that only the majority representative, i. e., the "general committee" of the organized craft, could "handle", i. e., present and negotiate the individual grievance or claim within the scope of a Schedule; and General Order No. 65 left no vestige or shadow of doubt that it must be the general committee of "the organization with which the agreement was made", the one "which holds the agreement". Of course, that majority rule, created by the War Administration, ended on March 1, 1920, with the termination of Federal Control, and did not revive until the Congress in 1934 made majority rule statutory and exclusive.

CONCLUSION.

It is respectfully submitted that a writ of certiorari should be issued.

Dated, San Francisco, California, March 17, 1943.

George M. Naus,

Attorney for Petitioner.

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Of Counsel.

Appendix

The Railway Labor Act of May 20, 1926, c. 347, 44 Stat. 577, as amended June 21, 1934, c. 691, 48 Stat. 1185, U.S.C., Tit. 45, §§ 151-163.

DEFINITIONS.

SECTION 1. [45 U.S.C. § 151]. When used in this Act and for the purposes of this Act—

[Defines: First, "carrier". Second, "Adjustment Board". Third, "Mediation Board". Fourth, "commerce". Fifth, "employee". Sixth, "representative". Seventh, "district court"; "circuit court of appeals".]

GENERAL PURPOSES.

SEC. 2. [45 U.S.C. § 151a.] The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES.

[45 U.S.C. § 152.] First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively; by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties, without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their

own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from. permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. . . .

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements

concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment

between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth.

NATIONAL BOARD OF ADJUSTMENT GRIEVANCES—INTERPRETATION OF AGREEMENTS.

Sec. 3. [45 U.S.C. § 153.] • • •

First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", • • • and it is hereby provided—

- (a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.
- (h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

- (i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.
 - (j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.
- (o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named.
- (p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District

Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises.

NATIONAL MEDIATION BOARD.

SEC. 4. [45 U.S.C. § 154.]

FUNCTIONS OF THE MEDIATION BOARD.

SEC. 5. [45 U.S.C. § 155.]

SEC. 6. [45 U.S.C. § 156.]

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SEC. 10. [45 U.S.C. § 160.]

GENERAL PROVISIONS.

SEC. 11. [45 U.S.C. \$161.]

Sec. 12. [45 U.S.C. § 162.]

SEC. 13. [Amends Judicial Code, § 128(b), and the Act of February 13, 1925.]

Sgc. 14. [45.U.S.C. § 163.] [Repeals prior legislation.]

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1943

No. 27

CONFAR COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY (an unincorporated association).

Petitioner.

YS.

SOUTHERN, PACIFIC COMPANY and GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (an unincorporated association).

Respondents.

BRIEF FOR PETITIONER.

GEORGE M NAUS,

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CLARENCE E. WEISELL,

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1943

No. 27

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY (an unincorporated association),

Petitioner,

SOUTHERN PACIFIC COMPANY and GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEEMEN (an unincorporated association).

Respondents,

BRIEF FOR PETITIONER.

OPINION BELOW.

The opinion of the Court below (R. 792) is reported in 132 F. (2d) 194. There was no opinion in the District Court (Northern District of California).

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered November 13, 1942. (R. 791.) A petition for rehearing was seasonably made and entertained, and denied, with modification of opinion, on January 22, 1943. (R. 828-829.) The petition for certiorari was filed March 22, 1943, and granted on May 24, 1943. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925. (28 USC § 347.)

STATUTES INVOLVED.

Because they are long the relevant portions of statutes are set out in Appendix A. They are:

- 1. The Railway Labor Act of May 20, 1926, as amended June 21, 1934, c. 691, 48 Stat. 4185 (45 USC §§ 151-163).
- 2. The Clayton Act, § 20, of October 15, 1941, c. 323, 38 Stat, 738 (29 USC § 52).
- 3. The Norris-LaGuardia Act of March 23, 1932; 90, 47 Stat. 70 (29 USC §§ 101-115).
- The Declaratory Judgments Act of June 14, 1934.
 512, 48 Stat. 955, adding section 274d to the Judicial Code (28 USC § 440).

STATEMENT.

Respondent Southern Pacific Company is a "carrier" within the meaning of § 1. First, of the Railway Labor Act. (Findings 1 and 2, R. 44.)

The locomotive engineers in the carrier's employ comprise a separate "craft or class of employes" (Finding, 4, R. 45) as that phrase is used in the Act, including its use in § 2, Fourth, viz.:

"The majority of any craft or class of employes shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

For many years before the passage of the Act and ever since patitioner General Committee of Adjustment (hereinafter called "Engineers' Brotherhood") has been the representative designated by the majority of the craftor class of locomotive engineers, and has collectively negotiated and entered into, with the carrier, agreements. (hereinafter called "Engineers' Schedule") concerning rates of pay, rules and working conditions of the craft. (Findings 4 and 5, R. 45, and 46; Engineers' Schedule printed at R. 326-467, offered in evidence at R. 111.) Similarly, in respect to the separate craft of locomotive firemen, respondent General Grievance Committee (hereinafter called "Firemen's Brotherhood") is the majority representative thereof, and has concurrently had a collective agreement, hereinafter called. "Firemen's Schedule". (Findings 4 and 5, R. 45, 46 and 47; Firemen's Schedule printed at R. 468-636, offered in evidence at R. 111.)

The memberships of the two brotherhoods overlap; most of the locomotive engineers are members of one Brotherhood or the other, some are members of both, and a few of neither (Finding 3, R. 45); i.e., Firemen's Brotherhood has in its membership a minority of the craft or class of locomotive engineers.

The last Eiremen's Schedule collectively entered into by the craft of firemen with the carrier (R. 468-6636), printed and published June 1, 1939, was the first Firemen's Schedule printed and published by Firemen's Brotherhood subsequent to the decision by this Court on March 29, 1937, of Virginian Ry, Co. v. System Federation No. 40, 360 U.S. 515. It contained the following Article (R. 6; Finding 5, R. 46-47; R. 468 at 616):

"Article 51" "Adjustment of Differences

Sec. 1. The right of any engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded.

The inclusion of the word "engineer" therein was the subject of protest by Engineers' Brotherhood to the carrier (R. 177-178), and the subject of contreversy between the two Brotherhoods. (R. 208.) There was an actual controversy between petitioner Engineers' Brotherhood, on one side, and the carrier and Firemen's Brotherhood, on the other, as to the validity of that inclusion in Article 51, section 1, quoted supra (Finding 17, R. 54-55), forming the basis of the Engineers' complaint for declaratory relief (R. 243), praying a declaration of rights and legal relations and further relief. (R. 13.)

The history of the inclusion of the word "engineer" in Article 51; section 1, of the Firemen's Schedule is this: In the year 1913 the two Brotherhoods entered into an

agreement known as the Chicago Joint Agreement, which was received in eyidence at R. 199-200 as Exhibits 9a, 9b and 9c, and appears in full as follows:

(R. 669-683): "Chicago Joint Agreement Between the Brotherhood of Locomotive Engineers and Brotherhood of Firemen, May 17, 1913."

(R. 684-700, do.); "Revised at Cleveland, May 4, 1918."

(R: 701-725, do.): "Revised at Cleveland, May 1, 1923."

No carrier was a party to the Chicago Joint Agreement. It was in the nature of a treaty between the two craft organizations. Article 9 reads:

"The principle of joint schedules for engineers, firemen and hostlers is affirmed and it is the recommendation of this Committee that joint meetings of the General Committees on every system of railroad be arranged for in future schedule negotiations. The policy of joint action herein subscribed to shall also apply to concerted wage movements." [R. 673, 689, 706.]

On the Southern Pacific, however, there was never a joint agreement between the carrier and the respective representatives of the two crafts (R. 264); the Chicago

Emergency Boards appointed by the President under § 10 of the Railway Labor Act sometimes go wrong on questions of lax, but should not go wrong on questions of fact, but one appointeds in the course of this contraversy mistakenly stated that the Carfier (i.e., Southern Pacific Company) was a party to the Chicago Joint Agreement, R. 730, marginal note. Seither Southern Pacific, nor any other carrier, ever was a party to the Chicago Joint Agreement.

An railroad parlance, an agreement entered into by the carrier; with the representative of a craff is called a "schedule," Sections of a schedule are often called "rules".

Joint Agreement was never adopted in its entirety on the Southern Pacific (R. 301); some of the provisions were carried into the separate agreements with the two crafts. (R. 200.) One of such provisions was Article 73 of the Chicago Joint Agreement, which read in part as follows:

- "(a) The right of any engineer, fireman or hostler to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded. " ""
- "(d)! When a member of either organization has a grievance which the local committee of his organization is unable to adjust with the local officers of the company, the matter shall be referred to the two General Chairmen who shall unite and work jointly in handling such grievance to its final conclusion.

The representation rule in the Firemen's Agreement, Article 51, section 1, "came out of the Chicago Joint Agreement". (R. 165-166; cf. 660-663.) The provisions relating to representation of engineers (Engineers' Agreement, Art. 32, sec. 22, and Firemen's Agreement, Art. 51, sec. 1), are traced chronologically through previous agreements and arranged in parallel in Exhibit 8. (R. 660-663, and 188.) Therefrom it will be seen that the first appearance of the representation rule in the Firemen's Agreement was in the one effective May 11, 1915, and subsequently republished in successive agreements in 1918, 1919.

[&]quot;To be read, of course, with Article 9, R. 673, laying down the principle of joint schedules", along with the agreement as a whole, which was a Joint Agreement.

in the Revisions of 1918 and 1923, R. 687 704.

1924 and 1929. Article 15% of the Chicago Joint Agreement read : .

"This agreement shall not be amended, revised or annulled, until after thirty days written notice has been served by order of the Convention of either organization." [R. 681, 699, 722.]

In accordance therewith, Engineers' Brotherhood (R. 201), terminated the Chicago Joint Agreement effective in October, 1927. (R. 201, 176, 157.) Disputes have since developed as a result. (R. 201.)

The amendments of June 21, 1934, to the Railway Labor Act of May 20, 1926, enacted "majority rule", § 2, Fourth, and the exclusive right of the representative designated by the majority of a craft was first sustained by this Court on March 29, 1937. Exhibit 2, Firemen's Agreement, published June 1, 1939, is the first? Firemen's

Article 16 in the 1923 Revision.

The dates since 1903 of successive printing of agreements be tween the carrier and the Firemen may be collected from the chronology in Exhibit 7, R 637-659, beginning April 1, 1907, as follows:

R. 637, April 1, 1907

R. 638, May 16, 1910;

R 642, May 11, 1915.

R. 645, December 1, 1918 R. 647, January 1, 1919;

R. 648; May 1, 1929.

R. 653, June 1, 1939.

Similarly; as to the Engineers 'Agr

R. 637, January 1, 1903; R. 638, March 1, 1908;

R. 639, February 20, 1911

R. 645, October 1, 1918; . R. 647. January 1, 1919;

R 648, December 1, 1919

R. 653, January 9, 1931.

[&]quot;Virginian Ry. Co. v. System Federation No. 10, 300 U.S. 515." 548, 81 L. Ed. 789, 800; "It imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other

agreement published after March 29, 1937. The inclusion therein of the provisions complained about in this litigation was the subject of dispute by Engineers' Brotherhood with the carrier (R. 177), and the subject of dispute between the two Brotherhoods. (R. 208.) It was the subject of a strike ballot and of controversy before an Emergency Board appointed by the President under \$10 of the Railway Labor Act (R. 726, et seq.), in 1937, which controversy persisted through the filing of the complaint for declaratory relief (R. 2) in the case at bar on August 12, 1939. (R. 13.) The parties were acutely aware of the controversy, the complaint (R. 12, paragraph 10), alleged:

"10. An actual controversy exists between plaintiff and defendant with respect to the rights and other legal relations of plaintiff in the premises. It is the assertion and contention of plaintiff that the provisions quoted from said Firemen's, Agreement in paragraph 9, supra, as agreed between defendant and said Firemen's Committee, and the interpretation and application thereof, violate and interfere with the right and duty of plaintiff to act as the sole designated representative of said craft of engineers, with the right and duty of the plaintiff to make, maintain, and interpret agreements concerning rates of pay, rulesand working conditions for said eraft of engineers. and with the rights of said craft of engineers, ander and for the purposes of said Railway Labor Act and the aforementioned Engineers' Agreement by and between plaintiff and defendant; and that by said Firemen's Agreement defendant has bargained collectively with said Firemen's Committee with respects to rules and working conditions governing, affecting and concerning said craft of engineers in their service as locamotive engineers: They do so violate and interfere. Defendant contends that they do not."

The answer of defendant carrier (R. 14, paragraph 7), said (R. 22):

defendant admits that plaintiff makes the assertions and contentions therein set forth, but denies that the same are well founded in either law or fact; defendant denies, in particular, the allegations set forth in the sentence oppearing in lines 5 and 6 on page 10 of said complaint, and reading they do so, violate and interfere. Defendant admits that an actual controvers, exists between plaintiff and defendant, as alleged in said paragraph 10.

And the intervening Firemen in paragraph VII of their pleading said (R. 27)

"VII. Answering paragraph 10 of the complaint, intervener admits that plaintiff makes the assertions and contentions therein stated, and admits that an actual controversy exists between plaintiff and defendant, but denies that any of the said assertions and contentions of plaintiff is well founded, and denies that any provision of said Firemen's agreement violates or interferes with any right of plaintiff or any of plaintiff's members, or any right of the craft of engineers, or is in any way contrary to the Railway Labor Act."

The controversy was over the "rights and legal relations" of the parties, upon questions of law. See the opening statements: for plaintin appellant (R. 73-83); for defendant appellee (R. 83-90); for intervener appellee (R. 90-109). Therein Mr. Burton Mason, for defendant, stated:

"From an inspection of the pleadings in this case, it becomes apparent at once that there are practically

no contested issues of fact. The only matter as to which the pleadings reveal any dispute of fact relates to the number of locomotive engineers in the employ of the defendant railroad company; and the parties have agreed to accept the figures prepared from the company's records, and presented here by a witness for the company, as correct upon that issue. The essential issues are therefore purely legal issues, arising from undisputed facts." [R. 83.]

Mr. Donald R. Richberg, for intervener, said:

"Now, there is no real issue as to any vital facts in this case. I think your Honor will have observed from the statement of Counsel for the Plaintiff and Counsel for the Defendant Railroad an agreement upon that point. Although there are certain denials in the answer of the Railroad and in the answer of the Intervener, they concern either denials of allegations that are essentially conclusions or declarations of right or denials of fact that are not material to the final determination of the issues here. Your Honor is presented with practically pure issues of law; not encumbered with any real vital issues of fact, and for that reason. I think perhaps a proper part of a statement at this time should be to endeavor to make clear just what those issues of law are. I may say that testimony is of use in this case only perhaps for these purposes. It may help to make clear the meaning of the allegations of the complaint to have testimony showing the practical operating conditions on the railway that produced this particular dispute." [R. 90-91.]

The Court below affirmed a declaration and decree (R. 55-57) of the District Court that the inclusion of the

word "engineer" in Article 51, section 1, supra, in the Firemen's Schedule is valid.

Subsidiary thereto, the Court below affirmed a companion declaration and decree (Conclusion 2, R. 55; Decree 5, R. 56) that Firemen's Brotherhood (although designated by only a minority of the craft of engineers) "is not precluded by the Railway Labor Act, or otherwise" from handling individual grievance claims "arising out of any engine employment, including employment as an engineer", i.e., grievance claims arising and asserted under the Engineers' Schedule.

For the convenience of the Court we here reprint those portions of the findings (R. 44, et seq.), that bear on the questions presented by the petition for certiorari:

The findings. (R. 44, et seq.)

- 1. Defendant is and at all times herein mentioned was a common carrier by railroad, engaged in the transportation of passengers and property in, through and between the states of Oregon, California, Arizona, New Mexico, Texas, Nevada and Utah.
- 2. Part of defendant's line is and was at all said times a separate operating unit called "Pacific Lines", with termini at Portland, Oregon, and San Francisco, California, Ogden, Utah, and El Paso, Texas.
- 3. At all*times herein mentioned plaintiff; was and is now a voluntary unincorporated labor association organ-

Micheral Committee of Adjustment. Pacific Lines of the carrier has 11 senjority—districts. On each of 8 of them the Engineers' Brotherhood has one local committee; 3 of the districts have 2 local committees each. The membership of plaintiff General Committee consists of the 14 local chairmen. (R. 135.)

ized under the authority of the Grand International Brotherhood of Locomotive Engineers (hereinafter called the Engineers' Brotherhood); intervener was and is now a voluntary unincorporated labor association organized under the authority of The Brotherhood of Locomotive Riremen and Enginemen (hereinafter called the Firemen's Brotherhood); both said brotherhoods were and are now likewise voluntary unincorporated labor associations, members of which are and af all said times have been employed as locomotive firemen and engineers but the railroads, of the United States and Canada, including said Pacific Lines. Said brotherhoods have, respectively, total memberships of approximately 60,000 (engineers) and \$5,000 (firemen). The memberships of the brotherhoods overlap: most enginemen belong to one or the other; some belong to both, and a few to neither.

'4(a). There are and continuously for many years have been a craft or class of locomotive engineers and a craft or class of locomotive firemen in the service of defendant on said Pacific Lines, which crafts or classes ever since the enactment of the Railway Labor Act have been and are now recognized by defendant as crafts or classes of employees of defendant within the meaning of said Act. Plaintiff is and ever since the enactment of the Railway Labor, Act has been the representative, for purposes of collective bargaining and agreement, selected; by a majority of the class or craft of locomotive engineers on Pacific Lines. Intervener is and ever since the enactment of said Act has been the representative, for purposes of collective bargaining and agreement, selected by a majority of the class or craft of locomotive firemen on said Pacific Lines.

- (b) The craft of engineers is, generally speaking and as a group, the higher paid and older in point of service of said two crafts. Individuals in both crafts are paid for service on the basis of hours served or miles run, either actual or constructive, or a combination of both hours and miles, whichever results in the greater payment. Such wage payments are made pursuant to and are governed by specific provisions of the agreements referred to in paragraph 5 hereof.
- 5. For many years before the passage of said Act and ever since, agreements have been negotiated from time to time between plaintiff and defendant and between defendant and intervener concerning rates of pay, rules, and working conditions of said crafts of engineers and firemen. The last of said agreements between plaintiff and defendant was made in writing, effective January 9, 1931, and has been continuously in effect ever since, with occasional amendments and additions; said agreement is hereinafter called the Engineers': Agreement. The last of said agreements between defendant and intervener was made in writing, effective as to rates of pay October 1, 1937, and as to rules June 1, 1939 and has been con-· tinuously in effect ever since; with occasional amendments and additions; said agreement is hereinafter called the Firemen's Agreement.
 - 6. (a) In locomotive employment, there are and continuously for many years have been constant changes in the duties and status of the engine employees and a constant ebb and flow between the craft of engineers and firemen. The number of engineers in defendant's service varies and has varied continuously with fluctuations in

volume of traffic seasonal and otherwise, and the number of firemen in defendant's service varies and has varied continuously for the same reasons. When the volume of defendant's business increases, furloughed engineers and qualified firemen are called to service as engineers. When traffic declines, engineers are demoted and almost all of them displace firemen; firemen so displaced in turn displace other firemen their juniors on the firemen's seniority list and firemen with the least seniority are released from work.

- (b) When additional locomotive engineers are required on Pacific Lines, they are largely obtained from the ranks of qualified firemen, and such firemen are generally advanced to service as engineers in the order of their seniority as firemen. Firemen are required to qualify for service as engineers and to accept promotion when an opening occurs.
- (c) As of January 1, 1940, there were 2343 employees of defendant on the seniority list of engineers for Pacific Lines, of whom 1654 were actually employed as engineers and 497 were actually employed as firemen. On that day approximately one-fifth of the firemen employed had been demoted from the engineers' working list, and at the time of their demotion had displaced firemen their juniors. As of July 1, 1940, there were 2307 employees of defendant on the seniority list of engineers for Pacific Lines, of whom 1736 were actually employed as engineers and 326 were actually employed as firemen. On that day approximately one-seventh of the firemen employed had been demoted from the engineers' working list and at the time of their demotion had displaced firemen their juniors.

- 7. (a) In the operation of Pacific Lines, there arise individual claims and grievance cases, involving disputes between individual employees and defendant as to their respective rights under the agreements referred to in paragraph 5 and as to matters not covered by said agreements. It is and ever since long prior to the enactment of the Railway Labor Act has been the custom for an engineman who has an individual claim arising out of any such dispute, and who desires the Firemen's or Engineers' Brotherhood (or other representative) to represent him in presenting and handling to conclusion the claim against defendant, to select whichever brotherhood (or other representative) he desires. In such cases a claimant engineman is not and never has been required to choose as his representative the brotherhood or labor organization selected as a representative for collective bargaining by the majority of employees in the service in which the claimant was employed when the dispute arose.
- claims is and since long prior to the enactment of the Railway Labor Act continuously has been for the claimant to select as his representative the brotherhood of which he is a member, regardless of the craft or class in which he was employed when the dispute arose. In a limited number of cases, the claimant presents or has presented his claim to defendant directly and without representation, or he selects or has selected another organization or individual to represent him. Such presentation and handling to conclusion of a claim by the individual directly concerned, or a representative other than the brotherhood to which claimant belongs, is within

the scope and meaning of the "usual manner of handling". Wen a claim, after initial presentation to defendant, is handled further with defendant's officers, or subsequently presented to the National Railroad Adjustment Board, it is usually handled by the same brotherhood (or other representative selected by the claimant) as presented the claim to defendant.

- (c) On almost every railroad in the United States, all individual claims, grievances and disputes of enginemen against their employers, whether within the scope of a collective bargaining agreement or not, and whether involving rights arising from such agreement or not, are and from a date long prior to the passage of the Railway Labor Act have been handled in the manner hereinabove set forth as applicable to defendant's Pacific Lines, and such was at all said times and is now the usual manner of handling such claims.
- S. At all times herein mentioned the Engineers' Brotherhood and Firemen's Brotherhood have been and now are, in competition for members. If members of the Firemen's Brotherhood were required to present their individual claims and grievances arising from service as engineers through the Engineers' Brotherhood, that fact would discourage membership in the Firemen's Brotherhood and encourage membership in the Engineers' Brotherhood. The presentation of such claims and grievances through the Firemen's Brotherhood, or other representative chosen by the individual claimant, does not affect or alter the Engineers' Agreement referred to in paragraph 5 or other collective bargaining agreement, or infringe any right of plaintiff as representative of the craft or class of engineers.

Section 1 of Article 51 of said Firemen's Agreement (which provides for the right of individual representation in claim and grievance cases) was based upon a similar provision in the agreement between defendant and intervener, dated May 1, 1929, which was based upon a practically identical 'provision in subsection (a) of Article VII of the agreement called "Chicago Joint Agreement", dated May 17, 1913, between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen. A substantially similar provision has since appeared in all contracts of each brotherhood, or the agencies thereof, with defendant. Neither plaintiff nor the Engineers' Brotherhood protested the inclusion of such provisions in any agreement between defendant and intervener until early in the vear 1939.

10, 11, 12, 13, 14. * *

15. At and before and at all times since the enactment of the Railway Labor Act in 1926, the custom on most railroads of the United States has been and is now for the employer to bargain collectively with its employees by crafts; the custom on said railroads was at all said times and is now that such class or craft representative be the organization chosen by the majority of the employees in said craft.

16. * *

17. There is an actual controversy between plaintiff and defendant and between plaintiff and intervener as to matters set forth in the pleadings of the parties and intervener, including controversy as to the validity of Article 51, section 1

The conclusions of law. (R. 55.)

- 1. This action involves laws regulating interstate commerce; this Court has jurisdiction, and the case is a proper one for the declaration, as herein set forth, of the rights and other legal relations of the parties.
- 2.8 The Firemen's Brotherhood (including its agencies, including intervener) is not precluded by the Railway Labor Act, or otherwise, from representing, and it has the lawful right to represent, its own members and any other individuals who desire its services in presenting any type or class of individual claim or grievance against defendant arising out of any engine employment, including employment as engineer, and the Firemen's Brotherhood (including its said agencies) has the lawful right to handle such claims and grievances to a conclusion, and the Engineers' Brotherhood does not have the sole or any right of representation in any such cases against the will of the individual claimant.

3, 4.

- 5. Defendant and intervener are entitled to judgment that:
- (a) Intervener has the lawful right to represent members of the Eiremen's Brotherhood and any other individuals who desire its services, in presenting any type or class of individual claims or grievances against defendant arising out of engine employment, including employment as engineer, and intervener has the lawful right to handle such claims and grievances to a conclusion, and plaintiff does not have the sole or any right of representation in any such cases against the will of the individual claimant.

- (b) Article 51, section 1 [and * * *], of the Firemen's Agreement, are, and each and every part of each and every one of them is, valid, and they do not nor does any of them violate either the Railway Labor Act or any other law or infringe any right of the Engineers' Brotherhood or of plaintiff.
- (c) Defendant and intervener recover their costs from plaintiff.

Let judgment be entered accordingly.

The decree. (R. 58.)

This cause came on to be heard at this term and was argued by counsel, and upon consideration thereof, it was ordered, adjudged and decreed as follows:

- a. Intervenor has the lawful right to represent members of the Brotherhood of Locomotive Firemen and Enginemen, and any other individuals who desire its services, in presenting any type or class of individual claims or grievances against defendant arising out of engine employment, including employment as engineer, and intervener has the lawful right to handle such claims and grievances to a conclusion, and plaintiff does not have the sole, or any, right of representation in any such cases against the will of the individual claimant.
- b. The following provisions in that certain contract, called "Firemen's Agreement", between defendant and Brotherhood of Locomotive Firemen and Enginemen, effective as to rates of pay, October 1, 1937, and as to rules, June 1, 1939, namely,

Article 51, section 1: " . .

are, and each and every part of each and every one of them is, valid, and they do not, nor does any of them, violate the Railway Labor Act, or any other law, or infringe any right of plaintiff.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred (in that branch of the decision under the Court's heading "A", R. 793 to 815):

- (1) In holding that the inclusion of the word "engineer" in Article 51, section 1, of the Firemen's Schedule does not violate the exclusive right of petitioner Engineers' Brotherhood to represent the craft or class of locomotive engineers, as the representative designated by the majority of that craft or class under the Railway Labor Act.
- (2) In holding that an individual member of the craft who elects to prosecute an individual grievance claim under the adjustment machinery of the Railway Labor Act, through a representative, may do so through a representative not designated by the majority of the craft.

QUESTIONS PRESENTED.

The questions presented on the merits in our petition for certiorari are:

1. Is the inclusion of the word "engineer" in Article 51, section 1, of the Firemen's Schedule a violation of the exclusive right of petitioner Engineers Brotherhood

to represent the craft or class of locomotive engineers as the representative designated by the majority of that craft or class under the Railway Labor Act!

2. Has any representative other than petitioner Engineers' Brotherhood, designated by the majority of the craft, a right to present and represent grievance claims under the Act in the case of any individual member of the craft of locomotive engineers who desires to proceed through a representative in presenting and prosecuting a grievance claim under the adjustment machinery, of the Act!

REQUESTED DISCUSSION.

In the order granting certiorari, R. 831, the Court squested counsel to discuss in their briefs the following questions:

- (1) whether resort to the declaratory judgment procedure is appropriate in the circumstances:
- (2) whether any questions of the construction of the contracts involved are governed by state or by federal law:
- (3) what bearing, if any, the Norris LaGuardia Act has on the propriety of granting the relief sought.

ARGUMENT

I.

THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT THE INCLUSION OF THE WORD "ENGINEER" IN ARTICLE 51, SECTION 1, OF THE FIREMEN'S SCHEDULE DOES NOT VIOLATE THE EXCLUSIVE RIGHT OF PETITIONER ENGINEERS BROTHERHOOD TO REPRESENT THE CRAFT OR CLASS OF LOCOMOTIVE ENGINEERS, AS THE REPRESENTATIVE DESIGNATED BY THE MAJORITY OF THAT CRAFT OR CLASS UNDER THE RAILWAY LABOR ACT.

The effect of the inclusion of the word "engineer" in the Firemen's Schedule, Article 51, section 1, "Adjustment of Differences", is that the carrier and a minority brotherhood have collectively contracted with respect to the craft or class of locomotive engineers in violation of the exclusive right of petitioner, the representative designated by the majority of the craft. This Court held in the year 1937 in Virginian Railway Co. v. System Federation, 300 U.S. 515, 548, that the provisions of the Railway Labor Act giving to the employees the right to organize and bargain collectively through the representative of their own selection gave an exclusive right to the majority of the craft, and imposed the affirmative duty upon the carrier to treat only with the true representative of the traft and hence the negative duty to treat with no other. It appears that the Court below turned decision upon a misconception of the ruling of this Court in the Virginian Railway Co. case concerning the matter of individual hirings. The decree in the Virginian Railway case as construed by this Court was said not to preclude "such individual contracts as [the carrier] may elect to make directly with individual employees". (300 1. S., at 549.) In the Virginian Railway case no collective contract had been entered into with the true representative designated by the majority of the craft. When a collective contract has been made with the representative designated by the majority of a craft, it necessarily supplants or supersedes individual contracts theretofore made. The exclusive right of the craft representative designated by the majority of the craft has been made by the Congress, under the enactment of majority rule in the Railway Labor Act as amended in 1934, paramount to the individual "freedom of contract" theretofore existing. Under the Wagner Act of 1935, which borrowed majority rule from the Railway Labor Act of 1934, the following ruling was recently made by the Seventh Circuit Court of Appeals, speaking through District Judge Lindley:

"Thus our rather narrow question is whether existing individual agreements with employees must yield to and be subordinated to the duty of the employer to bargain collectively with the Union as the exclusive agency, designated by law.

More specifically respondent insists that, under the language of N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U. S. 1, 45, 108 A.L.R. 1352, the duty of the employer to bargain collectively with the designated agency does not preclude such individual contracts as the company may elect to make directly with individual employees and asserts further authority for its position in the language of this court in N.L. R.B. v. Bear Brand Hosiery Co., 7 Cir., 131 F. 2d. 731. However, we believe that other decisions of the Supreme Court remove any uncertainty as to the full scope of the statutory duty of the employer to bargain collectively with the selected agency and as to.

the relationship of individual contracts with such duty. and establish the rule that inasmuch as the Act was expressly intended to promote and enacted under the constitutional congressional right to protect commerce, any existing contractual right interfering with effectuation of the legislative intent must yield to the duty imposed upon both employer and employees. Thus in National Licorice Co. v. N.L.R.B., 309 U. S. 350, at page 364, the court said: 'The Board asserts a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices. * * * Obviously employers cannot set at naught the National Labor Relations Act by inducing their workmen to agree not to demand per-" formance of the duties which it imposes or by insisting more than in a private litigation, that the employer's obedience to the Act cannot be compelled in the absence of the workers who have thus renounced their rights'.

It follows, we think, that the duty to bargain collectively is necessarily paramount to the freedom of contract enjoyed prior to enactment of the statute or before a collective agent has been chosen. When once the majority of the employees have exercised their right to choose a representative for bargaining, the employer's obligation to deal exclusively with such, representative as to all terms and conditions of employment becomes unconditional irrespective of any individual bargain previously made. in accord with the rule announced in other decisions: establishing the constitutionality of similar legislation. Contracts must be understood as having been made not only with reference to existing legislation but also with reference to the possible exercise of any rightful authority of the Government, and no

obligation of existing contracts may be invoked to defeat that authority. Knox v. Lee, 12 Wall. 457-549-551; Norman v. Baltimore & O. R. Co., 294 U. S. 240, 305-311, 95 A.E.R. 1352; United Shoe Machinery Corp. v. United States, 258 U. S. 451, 456; Paramount Famous/Lasky Corp. v. United States, 282 U.S. 30; Interstate Cir., Inc., y. U.S., 306 U.S. 208. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process. * * * That [the power to restrict freedom of contract] may be exercised in the public interest with respect to contracts between employer and employee is undeniable. * * * the fact "that both parties are of full age, and competent to contract, does not necessarily deprive the state of the power to interfere". West Coast Hotel v. Parrish; 300 U.S. 379, 391, 392, 394, 108 A.L.R. 1330.

Whether we look upon the power of the Congress to enact such legislation as the exercise of a police power growing out of the commerce clause, such as is the source of power of the State in regulation of its citizens' activities, State Public Utilities' Comm. v. Quincy, 290 Ill. 360, 125 N.E. 374; Schiller Piano Co. v. Illinois Northern Utilities Co., 288 Ill. 580, 123 N.E. 631, 11 A.L.R. 454; Integrity Mut. Ins. Co. v. Boys. 293 III. 307, 127 N.E. 748; Ward v. Farwelf, 97 III. 593, or whether we characterize it by other appropriate terms, all citizens, in their relationship one to the other, must so act and so contract as not to interfere with or infringe upon full execution of the constitutional power. Inasmuch as the Congress has been authorized by the constitution to enact the National Labor Relations Act, it follows that subsisting agree-

ments, negativing, abridging or infringing upon full effectuation of the legislative purpose must fall. We can not believe it was the purpose of the Supreme Court in the Jones & Laughlin case to limit this doctrine in any wise. To attribute such an intent to the court is to infer necessarily that it intended to overrule the reasoning of many authorities to the contrary. Holden v. Hardy, 169 U.S. 366; Knoxville Iron v. Harbison, 183 U.S. 13; Patterson v. The Eudora, 190 U.S. 169; McLean v. Arkansas, 21F U.S. 539; Chicago B. & Q. R. Co. v. McGuire, 219 U.S. 549, 567; Bunting v. Oregon, 243 U.S. 426, Ann. Cas. 1918A. 1043; New York Cent. R. Co. v. White, 243 U.S. 188. L.R.A. 1917D, 1 Ann. Cas. 1917D, 629. It follows that inasmuch as respondent's action denied full force and effect to the provisions of the National Labor Relations Act, the Board rightfully directed it to cease and desist."

N.L.R.B. v. J. I. Case Co., 7 Cir., 134 F. 2d 70, 72-73.

Accord, N.L.R.B. v. Knoxville Pub. Co., 6 Cir., 124 F. 2d 875, 883, col. 1, expressly distinguishing the Virginian Railway case. With respect to the effect of the adoption of majority rule in the Railway Labor Act, of 1934, Circuit Judge Sibley made the following clear and sound statement in Cole v. Atlantic Terminal Co., 15 F. Supp. 131, 132, col. 1:

"As a member of a craft or class to be defined, each employee merges his individual right to bargain in the common right of the group as represented by the spokesman chosen by the majority."

Hirings of craft members are individual on all railroads, and when there is no craft schedule the carrier and the individual member may embrace in the contract of hiring any terms whatever as to rates of pay, rules and working conditions, or they may be governed by unilateral announcement by the carrier. (Accord, Williams v. Jacksonville Terminat Co., 315 U.S. at 386, 402.) Whether a genuine collective contract existed in the Virginian Railway case, the purported contract having been made with a company union, is at least open to question. We submit that the statements in the Virginian Railway Co. case concerning individual contracts are not to be construed to mean that where there is a true collective contract governing rates of pay, rules and working conditions of the craft, the carrier may also make individual contracts, nor construed to permit a contract with a minority representative governing representation of individual grievance claims arising under the collective contract entered into with the majority representative.

Whatever was said by this Court in the Virginian Railway case about individual contracts can lend no support to the inclusion of the word "engineer" in the Firemen's Schedule, because that Schedule is not a contract between the carrier and an individual but between the carrier and a minority representative collectively representing a small minority of engineers. The decree in that case directed the carrier to 'treat with' the true representative of the majority of the craft and not to treat with a representative other than the true one, and enjoined it from entering into any collective agreement with a representative other than the respondent, the true representative. The case is, accordingly, direct authority for striking the word "engineer" from the Firemen's Schedule because, equally

with the Virginian Railway case, the record here discloses that the Firemen's Brotherhood is not the true representative of the craft of engineers.

Under the Act, § 2, Fourth, the majority of the craft may designate the exclusive representative of the craft; and in § 2, Eighth, it is provided that the provisions of § 2, Third, Fourth and Fifth "are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them". Majority rule therefore becomes a part of each individual hiring, and accordingly the Congress in the exertion of its power over commerce has forbidden the carrier and minority representative Firemen's Brotherhood from contracting about "engineers". We find utterly inexplicable the astonishing assertion (R. 796) in the opinion of the Court below, made notwithstanding the existence of the Engineers' Schedule, viz.:

"Under the decision of Virginian Railway Co. v. System Federation, supra, the engineer could have made an employment agreement with the Railway that he was to have the same rates of pay as those of the schedule of a British railway."

The question is not truly one of "individual" right; it is one of craft right. The craft, acting through a majority, determines the working conditions, and it was clearly ruled in 1923 that the question of who may be the representative "is and always has been one of the most important of the rules and working conditions in the operation of a railroad", Penna. R. Co. v. U. S. R. R. Labor Board, 261. U.S. 72, 83. Work is voluntary, not compulsory, and is

necessarily performed under the working conditions of the craft; and since the adoption of majority rule in the Railway Labor Act as amended in 1934 one of the working conditions is that *only* the representative designated by the majority may contract concerning the craft.

II.

THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT AN INDIVIDUAL MEMBER OF THE CRAFT WHO ELECTS TO PROSECUTE AN INDIVIDUAL GRIEVANCE CLAIM-UNDER THE ADJUSTMENT MACHINERY OF THE RAILWAY LABOR ACT, THROUGH A REPRESENTATIVE, MAY DO SO THROUGH A REPRESENTATIVE NOT DESIGNATED BY THE MAJORITY OF THE CRAFT.

A. We may assume that the individual engineer may alone decide whether a claim is to be asserted, i.e., that he may waive his individual claim or grievance if he

Many thousands of these disputes have been considered by boards established under the Railway Labor Act; but the boards have been unable to reach a majority decision, and so

[&]quot;A grievance" as the term is used in the Railway Labor Act, is described in the House Report on the bill containing the amendments of 1934 as a dispute which develops from the interpretation and/or application of the contracts between the labor unions and the catriers. We here give a quotation from the Report found in Washington Terminal Co. v. Boswell, 124 F. (2d) 235, 274 275:

The second major purpose of the bill is to provide sufficient and effective means for the settlement of minor disputes known as 'grievances', which develop from the interpretation and/or application of the contracts between the labor unions and the carriers, fixing wages and working conditions. The present Railway Labor Act provides for the establishment of boards of adjustment by agreement. In many instances, however, the carriers and the employees have been unable to reach agreements to establish such boards. Further, the present act provides that when and if such boards are established by agreement, the employees and the carriers may be equally represented on the board.

wills, Illinois Central R. Co. v. Moore, 5 Cir., 112 F. 2d 959, 965.

We may further assume that use of the adjustment machinery of the Railway Labor Act is voluntary, not, compulsory, i.e., that it is always open to the individual engineer to elect instead to bring suit in a Court as a party plaintiff in complete control of his own suit, *Moore v. Illinois Central R. Co.*, 312 U.S. 630, 634-636.

We may further assume that the individual engineer, through any representative he may individually select, may handle an individual claim or grievance as to any matter outside the statutory scope of the collective agreement or Engineers' Schedule, which scope under § 2. First and § 3, First (i) embraces "agreements concerning rates of pay, rules, and working conditions". Illustrations are found in personal injury caused by an unsafe place to work or negligence of the carrier, matters of statutory duty and the like.

We may leave open, as was done in Bloedel Donovan Lumber Mills v. International Woodworkers of America. 4 Wash. 2d 62, 72, the question whether the individual engineer may, without use of any representative, personally handle his own case with the carrier.

the proceedings have been deadlocked. These unadjusted disputes have become so numerous that on several occasions the employees have resorted to the issuance of strike ballots and threatened to interrup i interstate commerce in order to secure an adjustment. This has made it necessary for the President of the United States to intervene and establish an emergency board to investigate the controversies. This condition should be corrected in the interest of industrial peace and of uninterrupted transportation service. This bill, therefore, provides for the establishment of a national board of adjustment to which these disputes may be submitted if they shall not have been adjusted in conference between the parties.

We come, then, to our narrowed contention, and it is this: Since the locomotive engineers comprise a separate craft or class of employees, within the meaning of the Railway Labor Act, and since the majority of that craft or class have designated Engineers' Brotherhood as the representative of the craft or class for the purposes of the Act, § 2, Third, and Fourth (second sentence, it follows that when members of the craft voluntarily elect to use the procedural machinery provided by § 3, First (National Railroad Adjustment Board) for the adjustment of individual claims or grievances that develop from the interpretation or application of the collective agreement between the carrier and Engineers' Brotherhood, the latter is the sole and exclusive representative of the members of the craft, and minority members of the craft who elect to take the adjustment benefits of the Act must take the benefits cum onere; therefore they may not use Firemen's Brotherhood nor any other minority representative in the pursuit of an adjustment under the machinery of the Act.

Since the decision of the Court below, the Attorney General, Honorable Francis Biddle, on December 29, 1942, gave a written opinion to the President, under the Railway Labor Act, wherein it was stated inter alia:

"it is as important that there be collective action on the part of employees in the negotiation of settlements of grievances as it is that there be collective action in the negotiation of the provisions of the collective bargaining agreement which relate to wages, hours, and other conditions of employment. Disputes about grievances normally require interpretations of these latter provisions. Even when this is not the case, all members of the class or craft to which an aggrieved employee belongs have a real and legitimate interest in the dispute. Each of them, at some later time may be involved in a similar dispute."

The duty to bargain includes a duty to discuss interpretation with the exclusive representative of the majority, N.L.R.B. v. Sands Mfg. Co., 306 U.S. 332, 342, 83 L. Ed. 682. As well stated in the report of the Attorney General's Committee on Administrative Procedure (1941):10

"For the system of collective bargaining by the emplover with the representative of a majority of the employees may be such that the interests of the in: dividual employees who are members of the minority must yield to the interests of the majority. Majority representation requires that the will of the majority of employees should be binding upon all employees, so far as collective bargaining is concerned. Any other system would not be practically administrable. When the majority representatives negotiate an agreement with the employer, the minority employees must take their chances that their interests will be adequately protected, and if they are aggrieved, they will not be heard to complain, except within the organization. And the principle of majority representation extends not only to the making of initial or basic agreements. but also to modifications or amplifications or settlements of existing controversies."

The day to day adjustment of complaints or alleged violations of a collective agreement is a part of the *continu*ing right and process of collective bargaining; as said on

¹⁰ Administrative Procedure in Government Agencies; in 14 Parts, Part 4, Railway Labor, The National Railroad Adjustment Board, The National Mediation Board (Washington, 1941), p. 9.

rehearing in the individual grievance case of N.L.R.B. v. Newark Morning Ledger Co., 3 Cir., 120 F. 2d 262, 267, in ordering enforcement of the order in Matter of Newark Morning Ledger Co., 21 N.L.R.B. 988:

"The right of collective bargaining is, however, necessarily a continuing right. Collective agreements ordinarily, as in this case, run for definitely limited periods of time. Negotiations for their renewal must take place periodically and may commence, at least preliminarily, shortly after the signing of the preceding contract. Farthermore it may at any time become desirable or indeed necessary to bargain collectively for the modification of an existing collective agreement which has proved in practice to be in some respects unfair or unworkable or for the adjustment of complaints or alleged violations of such an agreement. Collective bargaining is thus seen to be a continuing and developing process by which, as the law now recognizes, the relationship between employer and employee is to be molded and the terms and conditions of employment progressively modified along lines which are mutually satisfactory to all concerned. It is not a detached or isolated procedure which, once reflected in a written agreement, becomes a final and permanent result. Section 7, as we have seen, guarantees to employees the right to organize and engage in concerted activities for the purpose of collective bargaining. This right must necessarily continue so long as the prospect of future bargaining remains. It will thus be seen that the act guarantees to employees the continuous right to maintain labor organizations for the purpose of collective bargaining, after the signing of a particular collective bargaining agreement as well as before."

Accord, Rapid Roller Co. v. N.L.R.B., 7 Cir., 126 F. 2d 452, 459.

In the Matter of North American Aviation, Inc., 44 N.L.R.B. 604 (enforcement refused, on different grounds, N.L.R.B. v. North American Aviation, Inc., 9 Cir., June 24, 1943, ____ F. 2d ____), the National Labor Relations Board said:

Page 612:

"Moreover, a collective contract is not complete as originally negotiated, nor is the process of collective bargaining complete upon the execution of a centract. After a contract has been negotiated and executed, it is continuously modified and supplemented by interpretations and precedents made by employer and employees from day to day in the course of their operations under the contract. This interpretation of the contract, no less than its negotiation, constitutes an integral part of the collective bargaining process."

Page 612, note 9:

"Collective bargaining is the process whereby representatives of a union meet with an employer or representative of an employer's association to fix the terms of employment for a vertain period of time. But it includes more than the creation of an agreement * * It involves also the enforcement and interpretation of the agreement throughout the months of its duration'. Carroll R. Daugherty, Labor Problems in American Industry, 1938 (Revised Edition). p. 450. See also N.L.R.B. v. Sands Mfg. Co., 306 U.S. 332, in which the Supreme Court said: 'The legislative history of the Act goes far to indicate that the purpose of the statute was to compel employers to bargain collectively with their employees to the end that employment contracts binding on both parties should be made. But we assume that the Act imposes upon the employer the further obligation to

meet and bargain with his employees' representatives respecting proposed changes of an existing contract and also to discuss with them the true interpretation if there is any doubt as to its meaning."

The body of decided cases while small is uniformly to the effect that a minority craft member complaining of an individual grievance within the scope of the collective agreement governing the craft may not be represented as to such a grievance by a minority representative such as Firemen's Brotherhood here: Matter of Mooresville Cotton Mills, 2 N.L.R.B. 952, 955; Mooresville Cotton Mills, v. N.L.R.B., 4 Cir.; 94 F. 2d 61; Bloedel Donovan Lumber Mills v. International Woodworkers of America, 4 Wash. 2d 62, 72; Dooley v. Lehigh Valley R. R. Co., 130 N. J. Eq. 76 (Railway Labor Act), affirmed in 131 N.J. Eq., cert. den. (87 L. Ed. 38).

In Moorescille Cotton Mills v. N.L.R.B., supra, the Fourth Circuit Court of Appeals stated, 94 F. 2d at 65, col. 1, that it was "in accord with the following conclusion of law" or ruling by the Board, in 2 N.L.R.B. 952, 955, supra:

"On the basis of the aforementioned conduct of Matheson on September 21, 1935, the complaint alleges that respondent has refused to discuss certain-grievances with the committee of the Union and has thereby engaged in unfair labor practices within the meaning of Section 8, subdivisions (1) and (5) of the Act. We feel we would be warranted in concluding that respondent's conduct constituted an actual refusal to discuss grievances with the committee, but this it is unnecessary to decide. It is not an unfair labor practice " " for an employer to refuse to dis-

cuss grievances with employee representatives when such representatives do not represent a majority of his employees. That the Union, on September 21, 1935, represented only a minority of respondent's employees is clear from the record."

There has been no departure from the ruling of the Board. Rosenfarb, National Labor Policy (1940), p. 195. The ruling applies a fortiori here, because under the National Labor Relations Act, § 9(a), 29 U.S.C.A. § 159(a), the proviso (which is not present in the Railway Labor Act) reads:

"Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer."

Note, the proviso does not say "representative". The House Report (quoted from in Rosenfarb, The National Labor Policy, supra, 226), stated:

"Since the agreement made will apply to all, the minority group and individual workers are given all the advantages of united action. And they are given added protection in various respects. First, the proviso of section 9(a) expressly stated that 'any individual employee or a group of employees shall have the right at any time to present grievances to their employer'. And the majority rule does not preclude adjustment in individual cases of matters outside the scope of the basic agreement."

Orders of the National Labor Relations Board requiring employers to cease negotiating with minority representatives upon the subject of grievances, have been upheld. In National Licorice Co. v. National Labor Relations

Board, 309 U.S. 350, 364, this Court upheld an order of the Labor Relations Board directing an employer to cease recognizing a minority representative as the representative of any of the employees for the purpose of dealing with the employer concerning "grievances, labor disputes; wages, rates of pay, hours of employment or conditions of work". And in National Labor Relations Board v. Remington Rand, Inc., 2d Cir., 94 F. 2d 862, a case in which a grievance based upon the claimed failure of the employer to comply with a provision of the collective agreement was in issue (p. 866), the Court upheld an order of the Labor Relations Board requiring the employer to withdraw all recognition from minority unions as the representatives of its employees at certain plants "for the purpose of dealing with respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work". (p. 874.) The Court held that such withdrawal of recognition was "an inevitable consequence of recognizing the Joint Board (majority representative) as the men's representative; the very purpose of the Act is to create a bargaining agent which shall be vested with exclusive power to treat with the employer, and there cannot be two representatives of the same unit". (p. 870.)

There are impelling reasons why the representation of grievances involving claims under a schedule may be lodged exclusively with the representative who has made the schedule agreement. Representation of such grievances by a representative other than the one who makes and interprets the schedule tends to circumvent, frustrate, or defeat the proper settlement of such grievances and the

maintenance and enforcement of the schedule negotiated by the majority, and thereby to defeat the purpose of the Act. It opens wide the door to an employer to include in disproportionate treatment, favoritism and discrimination (cf. as to an organized group and an unorganized remainder within a craft or class, N.L.R.B. v. Wilson Line, 122 F. 2d 809, 812, col. 2).

has an effect upon the interpretation or application of the schedule. By § 3, First, (m), awards of the Adjustment Board must be in writing, and "the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award". The decisions upon prior analogous claims amount to what may be called the "common law" of schedule interpretation. Such decisions are cited and argued by the representative and manifestly carry much weight in the application of the schedule to a pending claim.

"The written contract is a general constitution upon which a body of industrial law is built. The rules and regulations first set forth in the contract are elaborated and changed from day to day in the settlement of grievances and the interpretation of the con-

The National Railroad Adjustment Board has repeatedly recognized this fact. In the following illustrative decisions of the National Railroad Adjustment Board, First Division, the awards were based upon the following findings:

Award No. 534. "The settlements made under the rules in volved support of the employees' contention."

Award No. 571. "Under settlements on this property claim is supported."

Award No. 837. "On the basis of previous settlements by the carrier in connection with the rule in question, the employees contention in this particular case is supported."

Award No. 4992. "The prior settlement on this railroad, involving similar claims, warrant an affirmative award."

tract. Gradually they evolve into a body of industrial common law, developed in a democratic manner."

Clinton S. Golden and Harold J. Ruttenberg, The Dynamics of Industrial Democracy, p. 43, quoted in Matter of North American Aviation Inc., 44 N.L.R.B. 604, 612, note 8.

It is therefore of great importance to the craft representative that it shall have the right to handle all claims (where representation is desired) which thus affect the application and enforcement of the schedule. A minority representative, under the decision of the Court below. may interpret the schedule contrary to the interpretation of the craft representative, and settle a case in conformity with such unacognized interpretation. An illustration of this practice is shown by Exhibit 11 (R. 311), where the Firemen's Brotherhood compromised a claim for one-half of the amount appearing due under the Engineers' Schedule. A compromise by which a claim is settled for onehalf of its value is not a settlement in accordance with the "recognized interpretation" of the Engineets' Schedule. Such a practice plainly undermines the enforcement of the schedule; it tends to destroy the "recognized interpretation" by making an exception to it; it violates the Engineers' Schedule rule, Article 32, Section 229 (R. 452). that the controversy "will be handled in accordance with the recognized interpretation"; and it undercuts the authority of the craft representative to interpret and enforce its own rule. To accede to the right of a minority representative to make such settlements in one case is to concede it in all cases, with the result that many or all cases might be so compromised by a minority. If the carrier

finds that it can settle claims on a more favorable basis with the minority representative than with the craft representative, as in the instance illustrated by Exhibit 11 (R. 311), it will naturally make known its preference for dealing with the former. It will thus play one organization against the other, and one interpretation against another. Concessions made by the minority representative will call for concessions by the craft representative, and thus a premium will be placed upon compromise rather than upon strict enforcement. Thereby the full benefits of the schedule are frittered away and lost to the craft.

There is no more room for dual representation in the presentation of grievances arising under a schedule than there is for "pluralism" in the making of a schedule. If such dual representation is permitted, there will be constantly recurring disputes, and the Act will fail of its purpose as "an instrument of peace rather than of strife". (T. & N. O. R. Co. v. Ry. Clerks, 281 U.S. 548, 570.) The whole purpose and intent of the statute is to settle such controversies in the selection of the craft representative and thereafter to constitute this representative as the sole spokesman and bargaining agent of the craft.

B. Findings 7 and 8 about a "usual manner" of handling "individual claims and grievance cases" is in reality but a misplaced and erroneous legal opinion that endeavors to disregard the dominant purposes of the Act and place an insupportable weight upon the phrase. "the usual manner", in § 3 First, (i), which we quote:

"The disputes between an employee or group of employees and a carrier or carriers growing out of

grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party 12 to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." (Italies supplied.)

In regard to the authority of representatives to act for all employees in the execution of colective agreements, it has been repeatedly held that such agreements, when made are binding upon those individual members of the representative organization who favor the terms of the agreement, those members who oppose, and those employees who are not even members of the organization. It appears only reasonable that the authority which thus broadly represents all employees in the making of these contracts should have equal power to act for all in securing their

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interpretation. This too appears to have been the intention of the framers of the Railway Labor Act, for it is provided that the employees' representatives are to have full authority to adjust disputes in private conference with their employees. Thus Section 2, Second, provides as follows:

All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible elected with all expedition in conference between represents

¹²With respect to the criticism by the Court below of the National Railway Adjustment Board's decisions in Gooch c. Ogden knion Rg. Co., R. 808, and Rudd v. Minneapolis St. P. deic. Rg., R. 809, we adopt as our argument the reasoning of those cases rather than the reasoning of the Court below; and particularly we adopt as our argument here the reasoning in the Metaorandum (here reprinted as Appendix B) filed in Behalf of Railway Labor Executives Association (of which the intervener Ejecone here is a member) before the Attorney General's Committee on Administrative Procedure, in re National Railroad Adjustment Board. Inter alia it was there said on behalf of that Association (as spokesman for its members, including the present intervener Firemen):

The history and purpose of the provision are clear:

"The purpose of this salutory provision is to require the parties, before seeking the assistance of the government, to exhaust their own resources in an attempt to settle labor disputes."

Spencer, The National Railroad Adjustment Board (Studies in Business Administration, Univ. Chicago, April, 1938).

"Throughout its career the [Railroad Labor] Board [under the Transportation Act of 1920] 45 U.S.C.A. § 135] held steadfastly to this rule and refused to

tives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereto interested in the dispute.

See further to the same effect the following quotation from Section 2. Sixth:

In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within tendays after the receipt of such notice of a desire on the part of either party to confer in respect to such dispute to specify a time and place at which such conference shall be held:

Disputes which are not adjusted by conferences as provided in the two sections above quoted may then find their way to the Adjustment Board. Throughout all of these statutory provisions there is no indication that the framers of the statute had any intention to provide a means for adjusting disputes among employees. The only type of disputes for which provision is made are those where a carrier or carriers adopt one position and an employee or employees a contrary position this is

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the only type of dispute which can be referred to the Adjustment Board. Section 3, First (i) of the Act reads as follows:

The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or put of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including entertain any application for a hearing until this procedure has been complied with."

Wolf, The Railroad Labor Board (University of Chicago Press, 1927), p. 351.

There must be an exhaustion of negotiating effort to settle disputes, i.e., they "shall be handled in the usual manner up to and including the chief operating officer of the carrier". "Manner" merely relates to method of exhaustion.

cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

Summarizing all of the foregoing, therefore, the statute elearly intended to merge the individual interests of individual employees into the collective interest of the eraft or class to which they belong. This collective interest can only be expressed through a representative selected for that purpose. Such a representative is empowered to make agreements obligating the individual and to represent him in the consideration of grievances and disputes. In either case the act of the representative will bind the individual, even when against the latter's will. Hence, we conclude that when an individual's rights are bound up in a collective dispute between his employer and the collective bargaining group of employees to which he belongs, the representative has full authority to submit such a dispute to the National Railroad Adjustment Board, if it cannot be otherwise adjusted, to conduct the case before the Board

according to its best judgment, and to bind the individual by any decision which may be reached. The individual himself is no more a party to the case nor 'involved' therein than is a stockholder of the carrier corporation, and is therefore entitled to no notice of the pendency of the proceeding under the terms of the Railway Labor Act.'

The phrase, "handled in the usual manner", was originated in the United States Railroad Administration of 1918 and 1919. Prior thereto, under private control of railroads, the chief operating officer on each railroad had the last word upon individual grievances and disputes unless a strike was called. His decision was a final decision. That finality of decision was taken away when the Government took control of the railroads, under the Director General's Order No. 8, which ordered inter alia:

"Matters of controversy arising under interpretations of existing wage agreements and other matters not relating to wages and hours will take their usual yourse, and in the event of inability to reach a settlement will be referred to the Director General."

Appellate machinery for review of the chief operating officer's decision was needed. On March 22, 1918, bipartisan Railway Board of Adjustment No. 1 was created by General Order No. 13 (reprinted here as Appendix C), covering the four engine and train service Brotherhoods. In giving appellate jurisdiction from decisions of chief operating officers on particular railroads, the following language was used therein inter alia:

"10. Personal grievances or controversies arising under interpretation of wage agreements, and all other disputes arising between officials of a railroad and its employees, covered by this understanding will be handled in their usual manner by general committees¹³ of the employees up to and including the chief operating officer of the railroad."

^{13&}quot; General Committees." Such committees are common in railroad labor organization. Two "general committees" are parties, to the present litigation, as may be seen from their names.

Under identical texts, General Orders 29 and 53 created Boards Nos. 2 and 3 for other of the organized crafts that held schedules or collective agreements. There was a residue of employes in crafts either unorganized or holding no collective agreement. They were covered by the Division of Labor's Circular No. 3 of August 30, 1918, reprinted here as Appendix D. As to them, it was provided inter alia that grievances or controversies "will be handled in the usual manner by the individual, his representative, or by committees of employes, up to and including the chief operating officer of the railroad", before right of appeal to the Division of Labor.

* Thereafter, the Director General pronulgated General Order No. 65, reading:

"Grievances, affecting employees belonging to classes which are or will be included in national agreements which have been, or may be, made between the United States Railroad Administration and employees' organizations will be handled as follows:

(a) Grievances on railroads not having agreements with employees, which grievances occurred prior to the effective date of any national agreement, will be handled by railroad officials in the usual manner with the committees and officials of the organizations affected, for final reference to the Director of Labor as provided in Circalar No. 3 of the Division of Labor. Grievances on rairoads having agreements with employees, which grievances occurred prior to the effective date of any national agreement will be handled by railroad officials in the usual manner with the committees and officials of the organizations with which the agreement was made, for final reference to Railway Boards of Adjustment, as provided in general orders creating such Boards. Decisions made as the

result of such reference will apply to the period antedating the effective date of such national agreement and from the effective date of that agreement will be subject to any changes that are brought about by the national agreement.

(b) Grievances which occurred on the effective date of any national agreement, and subsequent thereto, will be handled by the committees of the organizations signatory to such national agreements, for final reference to the appropriate Railway Board of Adjustment, except on roads where other organizations of employees have an agreement with the management for the same class of employees, in which case grievances will be handled under that agreement by the committees of the organization which holds the agreement, for final reference to the Director of Labor as provided in Circular No. 3 of the Division of Labor," (Italics supplied.)

That clarifying General Order is to be considered as interpreting the original General Orders and the Circular, in analogy to the settled rule as to a clarifying statute. From the foregoing history it is clear that the phrase "usual manner" in the Railway Labor Acts of 1926 and 1934 relates solely to method, not to persons. It is addressed solely to exhaustion of intramural negotiating effort on the particular railroad, before an adjustment appeal "off the property". It does not identify who, for the employes, shall negotiate. Until the adoption of majority rule, the employer could negotiate with any and all groups, majority and minority. However, the 1934 Act had different sponsorship (Federal Coordinator of

^{**} OBailey, v. Clark, 88 U.S. 284; U.S. v. Fréeman, 44 U.S. 555; Cape v. Cope, 137 U.S. 682; Wetmore v. Markoe, 196 U.S. 68.

Transportation), and majority rule became the law. Majority representation means exclusive representation. There must still be handling in the "usual manner", i.e., exhaustion of negotiating effort on the particular railroad, through the hierarchy of carrier officers up to the chief operating officer. That handling in the "usual manner" must be, since 1934, by the majority representative of the craft, the exclusive representative. In its origin in General Order No. 13 creating Railway Board of Adjustment No. 1 for the train service crafts (engineers, firemen, conductors, brakemen) the phrase "handled in the usual manner" was immediately followed by the words, "by general committees". Repetition occurred in General Orders Nos. 29 and 53 creating Boards No. 2 (shop and mechanical) and No. 3 (telegraphers, clerks, et al.). When one comes, however, to the residue of crafts either unorganized or freshly in organization throes and yet without Schedules, "manner" or procedural method, i.e., exhaustion of negotiating effort on the property, is the same: the phrase remains, "handled in the usual manner", but the consequence of that antecedent becomes, "by the individual, his representative or by [n.b., not a brotherhood general committee' but simply in the ordinary sense:] committees of employees". The point, demonstrably clear, is that "manner" does not determine who, for the employes, shall "handle". And that origin and history has one further teaching: it shows the emthryo of exclusive majority rule, in that only the majority representative, i.e., the "general committee" of the organized craft, could "handle", i.e., present and negotiate the individual grievance or claim within the scope of a

Schedule; and General Order No. 65 left no vestige or shadow of doubt that it must be the general committee of "the organization with which the agreement was made" the one "which holds the agreement". Of course, the majority rule, created by the War Administration, ended on March 1, 1920, with the termination of Federal Control, and did not revive until the Congress in 1934 made majority rule statutory and exclusive. 15

REQUESTED DISCUSSION.

(1)

WHETHER RESORT TO THE DECLARATORY JUDGMENT PROCEDURE IS APPROPRIATE IN THE CIRCUMSTANCES.

The form of the question is substantially the same as the one put in *Great Lakes Dredge & Dock Co. v. Huffman*, No. 849, October term, 1942 (87 L. Ed. *1021), decided on May 24, 1943, i.e., on the same day that the order granting certiorari was filed in the case at bar. The cited case turns on the distinction between jurisdiction over a case and the propriety of exercising that jurisdiction. Clearly, there is a justiciable controversy in our case, and we therefore turn to discussion of the prepriety of exercising that jurisdiction in the circumstances.

¹⁵Before majority representative was made an exclusive representation, there was heetic conflict between the old National Labor Relations Board (Houde Engineering Co.; 1 N.L.R.B. (old) 35), on one side, and General Johnson and Mr. Richberg on the other, the latter contending for proportional representation or pluralism, i.e., the majority representative representing only the majority leaving a minority to choose separately a minority representative; and unorganized workers to act individually for themselves. Generally, see Lorwin and Wubnig, Labor Relations Boards (Brookings Institution, 1935), pp. 109-112, and 268-271; Rosenfarb, National Labor Policy (1940), p. 224.

The exercise of a judicial discretion to refuse to exercise jurisdiction in *Brillhart v. Excess Ins. Co.*, 316 U.S. 491, was based upon comity between "the state and federal courts in the administration of the Federal Declaratory Judgments Act" (316 U.S., at 494). At bar, there was not and is not any case pending in any state Court.

Another head of comity is raised in Great Lakes Dredge of Dock Co., supra, i.e., the declaratory judgment procedure is not appropriate when the circumstances are that the defendant is a state tax officer and the state has afforded an adequate statutory remedy by suit to recover taxes back; in such case a federal declaration "will be withheld in the sound discretion of the court".

The field of comity is, of coarse, broader than the foregoing particular instances, but does not extend to the case at bar. Here, as we will discuss under head (2), infra, the contract questions present are governed by federal law, but if they were governed by state law comity would not call for a declaration to be withheld in the exercise of a discretion to withhold. Speaking generally, the rule of comity is applied when there is federal interrelationship with one state; here, the Firemen's Agreement, R. 468-632, "dated at San Francisco, Calif., June 1, 1939", R. 632, indicates that it is to be performed in the eight states over which Pacific Lines of

Mexico and Texas. Article 19, R. 524, of the Firemen's Agreement lists the cities and towns in those states wherein are located "all division or district terminals at which engine crews are usually changed". Article 3, R. 478-480, lists the termini of assigned runs in through passenger service and main line pooled freight service. Article 40, R. 595-596, lists the seniority districts. Exhibit No. 3, R. 117, shows the territorial distribution of engineers and figure. Compare Exhibit No. 4, R. 120.

the carrier extend. The Civil Code of California, 17 § 1646, reads as follows:

"A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made." [Italics supplied.]

Further, the Firemen's Agreement is not a contract of hiring; hirings are individual and occur in each of the eight states, but under the "rates of pay, rules and working conditions (Railway Labor Act of 1934, § 2) prescribed in the collective agreement entered into with the representative of the craft. The Railway Labor Act of 1934, § 2. Eighth, enacts that "the provisions of" \$2. Third. Fourth and Fifth "are hereby made a part of the contract of employment between the carrier and each employee". In short, the Firemen's Agreement, as the collective contract of the craft, co-operates with an act of Congress in supplying the terms of the individual contracts of employment. It seems to us, therefore, that judicial discretion should favor the granting of a Federal declaratory decree, rather than a refusal to exert the undoubted power or jurisdiction to make a declaration.

Speaking generally of the criteria of discretion, Borchard, Declaratory Judgments, says (1st ed. 107; 2d ed., 299):

"The two principal criteria guiding the policy in favor of rendering declaratory judgments are (1) when the judgment will serve a useful purpose in

¹⁷As to what the rule may be in other states, when performance is to be in a number of states, see 12 C. J. 451, note 77, and 15 C. J. S. 889, note 36.

clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding. It follows that when neither of these results can be accomplished, the court should decline to render the declaration prayed."

Plainly, each of those results can be accomplished by a declaratory decree here.

The report of the Judiciary Committee of the Senate (reprinted in the Appendix to Borchard's treatise), which was written by Prof. Borchard, 1st ed., 629; 2d ed., 1043):

"The declaratory judgment differs in no essential respect from any other judgment except that it is not followed by a decree for damages, injunction, specific performance, or other immediately coercive decree. It declares conclusively and finally the rights of parties in litigations over a contested issue, a form of relief which often suffices to settle controversies and fully administer justice."

In the memorandum that he filed during the hearings, and which was printed at pages 70-81 in the transcript¹⁹ of the hearings, he said:

"The declaratory action in England and other jurisdictions which have enjoyed this form of pro-

¹⁸ Borchard, 2d ed., 312, footnote 5.

19 HEARINGS Before A SUBCOMMITTEE OF THE COM,
MITTEE ON THE JUDICIARY UNITED STATES SENATE,
Seventieth Congress, First Session, on H. R. 5623, AN. ACT TOAMEND THE JUDICIAL CODE BY ADDING A NEW SECTION, TO BE NUMBERED 274D, APRIL 27 and MAY 18,
1928: Printed for the use of the Committee on the Judiciary,
UNITED STATES GOVERNMENT PRINTING OFFICE
WASHINGTON: 1929

cedure, may be brought in two types of cases: (a) Where no other form of action is possible, as in the case of Guaranty Trust Co. v. Hannay [(1915), 2 K. B. 536; 12 A.L.R. 1, at 13-26], in which the Guaranty Trust Co. brought an action for a declaratory judgment that they were under no duty to repay to Hannay, as the latter had privately claimed, the amount received by the Guaranty Trust on certain forged bills of exchange, and (b) where some more coercive action for damages or injunction would have been possible, but the plaintiff is content with a milder judgment, merely declaring his rights as claimed in his petition or complaint."

Now, if the Norris-LaGuardia Act (which we will discuss under another head, infra) gives an immunity from an injunction, then this case is of the first type, because "no other form of action is possible"; if such immunity does not exist, then the case is of the second type.

"At the outset, it may be remarked that in form [the action for a declaratory judgment] differs in no essential respect from any other action, except that the prayer for relief does not seek execution or performance from the lefendant or opposing party. It seeks only a final determination, adjudication, ruling, or judgment from the court, but the conditions of the usual action, procedural and substantive, must always be present, namely, the competence or jurisdiction of the court over parties and subject-matter. the capacity of the parties to sue and be sued, the adoption of the usual forms for conducting judicial proceedings (including process, pleadings, and evidence), the existence of operative facts justifying the judicial declaration of the legal consequences, the assertion against an interested party of rights capable of judicial protection, and a sufficient legal interest in the moving party to entitle him to invoke a judgment in his behalf. The fact, however, that no coercive decree is sought or is attached to the judgment enables actions to be brought for a declaratory judgment on two different types of operative facts:

(a) those which might also have justified an action for an executory (coercive) judgment or decree, or (b) those which are not susceptible of any other relief."

Borchard, 2d ed., 25-26.

"The declaration is a conclusive determination of the rights of the parties, and is res judicata. As already observed, it is not, however, either strictly equitable or legal relief. Albeit its historical affinity is equitable, the proceeding is special and sui generis, disregarding the distinctions between law and equity and the technical limitations of both. Consequential or executory relief may be demanded either in association with or as a supplement to declaratory relief, should the declaration be not observed and coercion become necessary. The declaration is an authoritative adjucation and guide to conduct, and rarely, so far as records disclose, has it become necessary again to invoke the aid of the court to carry a declaratory judgment into forceful effect. Whether or not the original declaratory judgment or decree reserves the liberty to apply for further relief, if necessary, such liberty is always implied and the American statutes make special provision for it,"

Borchard, 2d ed., 438-439.

[&]quot;'Further relief' obviously means coercive or executory relief which may be granted on the original

petition or a subsequent motion or petition. This merely carries out the principle that every court, with few exceptions, has inherent power to enforce its decrees and to make such orders as may be necessary to render them effective. Even a petition for 'further relief' is unnecessary, if the court retains jurisdiction to issue further orders to make its judg: ment effective. And if it considered that a further declaratory judgment or decree, would accomplish this purpose, there is no reason why it would not be proper. Section 8 of the Act provides that it may be granted whenever 'necessary or proper', although, 'as already observed, the very fact that ancillary, or, as it is sometimes called, 'correlative' coercion is obtainable on motion or petition, in which the declaratory judgment is res judicata, makes the demand for All that is necessary is that the court, on reasonable notice, require the losing party to show cause why further relief should not be granted forthwith. Since the 'further' or coercive relief could have been demanded in combination with the declaration, in the same action, there is no reason why it cannot be demanded in an ancillary motion should the declaration be disobeved or disregarded."

Borchard, 2d ed., 441.

The case at bar may be considered from two viewpoints:
(1) judicial protection of plaintiff's right of representation, Texas & N. O. R. Co. v. Brotherhood of Ry. & S. S.
Clerks, 281 U.S. 548, 567, et seq.; (2) judicial protection
against the no-right of defendant and intervener, as to
which Borchard, 2d ed., 1014, says:

"The status quo may be preserved against impairment by seeking to prevent the defendant from vio-

the defendant's no-right²⁶ or disability to act to the plaintiff's injury. This type of security has usually been achieved by a bill of injunction, and while inthese cases the prayer for a declaration is often combined with a request for injunction or other relief, an injunction is not always obtainable, whereas the declaration will usually serve as an adequate measure of preventive relief. The continuation of the act complained of is as a rule interrupted by a declaration of its illegality or invalidity, and that suffices."

A precedent of a declaratory decree in a labor dispute, notwithstanding refusal of an injunction, is found in Bowie v. Gonzalez, 1 Cir., 117 F. 2d 11. The construction and interpretation of statutes "is a common quest of declaratory action", Borchard, 2d. ed., 788-789; and 529.

Needed Procedural Reform (November, 1918), the use of this term is explained as follows (28 Yale L. J. 2, note 4). The the course of this study we shall adopt Prof. Wesley N. Hohfeld's valuable analysis of jural relations as set forth in (1913) 23 YALE LAW JOURNAL, 16. These relations may most readily be presented in Prof. Hohfeld's schome of opposites and correlatives;

mmunity power privilege (right . liability DOWER (no-right duty. Opposites . Intver privilege right . . disability liability. no-right. Correlatives & duty

The importance of this analysis is revealed throughout the subject of declaratory judgments. See particularly Guaranty Trust Co. v. Hannay (C. A.) [1915] 2 K. B. 536, 548, Buckley, L. J., and p. 51, Bankes, L. J.

WHETHER ANY QUESTIONS OF THE CONSTRUCTION OF THE CONTRACTS INVOLVED ARE GOVERNED BY STATE OR BY FEDERAL LAW.

The petition for certiorari in the present case relater to the exclusive right of representation under the majority rule provision of the Railway Labor Act of 1934. The petition therefore presents solely a federal question, Sola Elec. Co. 1. Jefferson Elec. Co., 317 U.S. 173, and cases cited therein.

The case at bar is not dependent on diversity of citizenship. If it be thought that it goes beyond the fed. eral question of who can contract, into the terms of a contract, then the case becomes one wherein Congress has through the Railway Labor Act of 1934. § 2. Eighth. occupied the field of contract by prescribing part of the terms of the contract of employment; and through \$2. First, and related provisions, occupied the field of collective contracts with crafts, "in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof": and through § 2. Sixth, and 3. First. (i), has occupied the field of adjustment of disputes under collective contracts. The collective contracts therefore raise legal relations "governed by a 'federal common law" under the reasoning in O'Brien 1. Western Union Tel. Co., 1 Cir., 113 F. 2d, 539, 541. cited with apparent approval in Sola Elec. Co. r. Jeffer son Elec. Co., supra (317 U.S. 473); and Phileo Corp. r. Phillips Mfg. Co., 7 Cir., 133 F: 2d 663. In the latter case, at page 671, it is said:

"But to say that Congress has 'occupied the field', as in Postal Telegraph-Cable Co. v. Warren-Godwin Co., 251 U.S. 27, 31; Western Union Telegraph Co. v. Boegli, 251 U.S. 315, 316, and O'Brien v. Western Union Telegraph Co., 1 Cir., 113 F. 2d 539; 541, is only another way of stating the rule that federal courts may go beyond mere interpretation of the express words used in an Act of Congress, to decide interstitial and cognate issues so as to effectuate the evident policy of the Act, either express or implied, as in Awotin v. Atlas Exchange Bank, 295 U.S. 209, 213, 214; Board of Commissioners v. United States, 308 U.S. 343, 351-353, 354; Deitrick v. Greanev, 309 U.S. 190, 200; D'Oench, Duhme & Co. v. Federal Deposit Insurance Corporation, 315 U. S. 447, 459, 461; Prudence Corporation v. Geist, 316 U.S. 89, 95; Sola Electric Co. v. Jefferson Electric, Co., 317 U.S. 173."

Congress through the Railway Labor Act sought peace in railway labor relations, which will be promoted by one set of federal rules governing railway collective contracts; it could hardly have intended to promote discord arising from dissonance in a chorus of 48 voices. While the lines of defendant carrier extend over only eight states, some provisions of the collective contracts thereon are common throughout the nation. A dispute over the meaning of a provision in a railway collective contract should be settled once for all and not left to create grievances 47 times more. An engineer, fireman, conductor or brakeman whose daily run crosses a state boundary (and many do) should not be teld that his contract has one meaning on part of his run and a different meaning on the remainder.

WHAT BEARING, IF ANY, THE NORRIS-LA GUARDIA ACT HAS ON THE PROPRIETY OF GRANTING THE RELIEF SOUGHT.

We will assume,21 without conceding, that there is present a "labor dispute," within the meaning of the Act.

As to the substantive effect of the Act, enacted in the year 1932, U.S. v. Hutcheson, 312 U.S. 219, gave it such effect with respect to an earlier Act enacted in the year 1890. The majority rule provision of the Railway Labor Act was enacted in 1934. Moreover, the acts in the case at bar do not fall within any of the specific categories of acts immunized under §4 of the Norris-LaGuardia Act.

There is, therefore, no prohibition against a restraining order or injunction, *Virginian Ry. Co. v. System Federation*, 300 U.S. 515, 562-563, but simply regulation of the procedure to be followed in obtaining an injunction. None has yet been asked in this case. If, subsequent to the

² The question of what is a "labor dispute" under the "big"; and "little" "Norris-LaGuardia" agts is currently a highly controversial one. See, e.g., Markham & Callow v. International Woodworkers. (Oregon, March 23, 1943), 435 Pac. 2d 727 collecting and reviewing federal and state decisions.

In a controversy between two rival unions as to which one represented a majority, it was held in Oberman & Co. v. United Garment Workers of America, 21 F. Supp. 20, at 26, col. 2, that after the National Labor Relations Board had investigated the controversy and issued a certificate of representation, the certificate terminated the controversy and therefore there was no longer a "labor dispute" within the meaning of the Norris-LaGuardia Act. The certificate there finds equivalent here in the admissions of the pleadings of defendant and intervener that plaintiff is the representative duly designated by the majority of the craft of engineers. For a case of union rivalry wherein there was neither certificate nor admission and consequently a "labor dispute", see Fur Workers Union Local No. 72 v. Fur Workers Union No. 21238, 105 F. 2d 1, affirmed in 308 U.S. 522.

declaratory judgment, an injunction be desired, the Declaratory Judgments Act, (2), says that such further relief may be granted upon application. Borchard, 2d ed., '441, quoted supra, explains that the application for "further relief" may be made by "ancillary motion" within the same cause "should the declaration be disobeyed or disregarded". If and when such motion should be made hereafter in the present case it will be time enough to comply with the procedural requirements of the Norris-LaGuardia Act, and it will be the situation then existing that will condition such compliance.

The prohibitions of the Norris-LaGuardia Act are against an injunction, not against some other remedy. The Act does not prohibit a declaratory judgment; indeed, the Declaratory Judgments Act was enacted more than two years later than the Norris-LaGuardia Act. As said by a co-draftsman²² of the Norris-LaGuardia Act (Frankfurter and Greene, The Labor Injunction, page 220), "all other remedies in federal courts." remain available. The evil sought to be ended by the Norris-LaGuardia Act is a matter of familiar judicial and political history, and is entirely unrelated to declaratory judgments. Moreover, the evil related to injunctions obtained by employers; at bar, the employer is a defendant.

The public policy that moved the Congress in 1934 to enact majority rule in railway labor relations is perfectly consistent with the public policy stated earlier in the

²²In Frankfurter and Greene, The Labor Injunction, 226, footnote 61, it is said: 'Having long entertained the views expressed
herein, one of the present writers, at the suggestion of the Senate
Subcommittee on the Judiciary, collaborated with others likeminded in drafting the bill under discussion.'

Norris-LaGuardia Act, and there can be no conflict whatever between the two Acts through a declaratory judgment interpreting and applying the Congressional enactment of majority rule.

Dated, San Francisco, California, September 17, 1943.

Respectfully submitted,

GEORGE M. NAUS,

Attorney for Petitioner.

CLARENCE E. WEISELL, (Horn, Weisell, McLaughlin & Lybarger), Of Counsel.

(Appendices A, B, C and D Follow.)

Appendix A

The Railway Labor Act of May 20, 1926, as amended June 21, 1934, c. 691, 48/Stat. 1185 (45/USC \$\frac{4}{2}\) 451-163).

Definitions.

Section 1. [45 U.S.C. § 151]. When used in this Act and for the purposes of this Act-

[Defines: First, "carrier". Second, "Adjustment Board". Third, "Mediation Board". Fourth, "commerce". Fifth, "employee". Sixth, "representative". Seventh: "district court"; "circuit court of appeals".]

GENERAL PURPOSES.

Sec. 2. [45 U.S.C. 151a.] The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES,

[45 U.S.C. § 152.] First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties, without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their

own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individual, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. . .

Sixth: In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment

between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth: * .. .

NATIONAL BOARD OF ADJUSTMENT
GRIEVANCES—INTERPRETATION OF AGREEMENTS.

SEC. 3. [45 U.S.C. § 153.] * * *

First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", * • • and it is hereby provided—

- (a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act. * * *
- (h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

- (i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.
- (j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.
- (o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named.
- (p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person f r whose benefit such order was made, may file in the District Court of the United States for the district in which he re-

sides or in which is located the principal operating office, of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises.

NATIONAL MEDIATION BOARD.

SEC. 4. [45 U.S.C. § 154.]

FUNCTIONS OF THE MEDIATION BOARD.

Sec. 5. [45 U.S.C: § 155.]

Sec. 6. [45 U.S.C. § 156.]

ARBITRATION.

Sec. 7. [45 U.S.C. § 157.]

EMERGENCY BOARD.

Sec. 10. [45 U.S.C. § 160.]

GENERAL PROVISIONS.

SEC. 11. [45 U.S.C. § 161.]

SEC. 12. [45 U.S.C. § 162.]

· Sec. 13. [Amends Judicial Code, § 128(b), and the Act of February 13, 1925.]

Sec. 14. [45 U.S.C. § 163.] [Repeals prior legislation.]

The Clayton Act, § 20, of October 15, 1914, c. 323, 38 Stat. 738 (29 USC § 52).

"No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or. from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or fo abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike. benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be, done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

The Norris-LaGuardia Act of March 23, 1932, c. 90, 47 Stat. 70 (29 USC §§ 101-115).

§ 1 [29 USC § 101]: "No court of the United States, as defined in sections 101-115 of this title, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in such sections."

§2 [29 USC §102], "In the interpretation of sections 101-115 of this title and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in such sections, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation

of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are hereby enacted."

§ 3 [29 USC § 103]. "Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 102 of this title, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

- (a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or
- (b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization."

- §4 [29 USC § 104]. "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any ease involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
- (a) Ceasing or refusing to perform any work or to remain in any relation of employment;
- (b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title:
- (c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;
- (d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;
- (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence:
- . (f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;
- (g) Advising or notifying any person of an intention to do any of the acts heretofore specified:

- (h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and
- (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title."
- § 5 [29 USC § 105]. "No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this title."
- § 6 [29 USC § 106]. "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."
 - shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in sections 101-115 of this title, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

- (a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
- (b) That substantial and irreparable injury to complainant's property will follow;
- (c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief:
- (d) That complainant has no adequate remedy at law; and
- (e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to turnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: Provided, however. That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable; such a temporary restraining order may

be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity."

§8 [29 USC § 108]. "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

porary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in sections 101-115 of this title."

§ 10 [29 USC § 110]. "Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall upon the request of any party to the proceedings and on is filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character."

§ 11 [29 USC § 111]. "In all cases arising under section 101-115 of this title in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: Provided. That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehaviour, misconduct or disobedience of any officer of the court in respect to the writs, orders or process of the court."

\$12 [29 USC \$112]. "The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred else where than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall there upon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding."

§ 13 [29 USC § 113]. "When used in sections 101-115 of this title, and for the purposes of such sections—(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same indutry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same

or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section).

- (b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.
- (c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.
- (d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or

may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."

§ 14 [29 USC § 114]. "If any provision of sections 101-115 of this title or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of such sections and the application of such provisions to other persons or circumstances shall not be affected thereby."

§ 15 [29 USC § 115]. "All acts and parts of acts in conflict with the provisions of sections 101-115 of this title are hereby repealed."

The Declaratory Judgments Act of June 14, 1934, c. 512, 48 Stat. 955, adding section 74d to the Judicial Code (28 USC § 400).

- "(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, or complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.
- (2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be

deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general yerdict be required or not."

Appendix B

[Extracts from Memorandum filed by the attorneys for Railway Labor Executives' Association, before the Attorney General's Committee on Administrative Procedure.]

BEFORE THE ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE

IN RE: NATIONAL RAILROAD . ADJUSTMENT BOARD

MEMORANDUM
Filed in Behalf of
RAILWAY LABOR EXECUTIVES: ASSOCIATION

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4. The Question of Whether Notice Should Be Given to Employees Who Are Parties to a Given Dispute But Who May Be Affected By Any Decision Rendered by the Board.

From time to time cases come before the Adjustment Board involving controversies as to the interpretation of agreements where the employees' representative has accepted an interpretation favorable to the interests of certain employees, while the contrary position adopted by the carrier is favorable to other employees. A question has arisen as to whether those individual employees whose interests will be harmed if the claim of the representative

is sustained are entitled to independent notice of the pendency of the proceeding and opportunity to intervene.

It appears to us that this question has been magnified out of all proportion to its true significance. Out of more than 5,000 awards made by the National Railroad Adjustment Board to date only two have been challenged by individual employees on the ground that they received no notice of the proceedings, and these two cases involved a total of three workmen. However, as considerable space has been devoted to this issue both in the carriers' presentation and in Monograph No. 17, we wish to discuss it in detail.

It will be noticed that the tentative memorandum of agreement above referred to does not cover this point. The position of the railway labor organization is that employees such as those in question are not entitled to notice either under the provisions of the Railway Labor Act. or from any consideration of policy.

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The Railway Labor Act, Section 3, First (j), reads as follows:

"Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any dispute submitted to them."

It will be seen from the above quotation that the statute requires notice to all employees "involved" in the dispute. The question, therefore, is whether employees whose individual interests do not correspond with the position of the employees' representative are "involved," within the meaning of the statute. It is the position of the Railway Labor Organizations that such employees are not parties to the dispute and are not involved in it in any way.

The whole intent of the Railway Labor Act is to foster the development of bi-partisan handling of labor disputes on the railroads. The two parties contemplated by the statute are on the one hand the carrier, and on the other all of the employees who are members of a given craft or class (the collective bargaining unit recognized by the Act), acting through their chosen representative. This purpose is apparent throughout the statute as the following examples will demonstrate.

The Act provides that:

"The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." (Section 2, Fourth.)

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The Act establishes means for the selection of representatives of employees in case of dispute and provides that when a representative is selected and certified by the National Mediation Board—

"" • "Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purpose of this Act." (Section 2, Ninth.)

It is contemplated that in the making of agreements concerning rates of pay, rules and working conditions the

chosen representative shall speak for all employees, for it is provided that:

"Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes, shall be agreed upon within ten days after the receipt of said notice, etc." (Section 6.)

In regard to the authority of representatives to act for all employees in the execution of collective agreements, it has been repeatedly held that such agreements, when made, are binding upon those individual members of the representative organization who favor the terms of the agreement, those members who oppose, and those employees who are not even members of the organization. It appears only reasonable that the authority which thus broadly represents all employees in the making of these contracts should have equal power to act for all in securing their

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interpretation. This too appears to have been the intention of the framers of the Railway Labor Act, for it is provided that the employees' representatives are to have full authority to adjust disputes in private conference with their employers. Thus Section 2, Second, provides as follows:

"All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided with all expedition in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereto interested in the dispute."

See further to the same effect the following quotation from Section 2, Sixth:

"In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of such notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: * * *"

Disputes which are not adjusted by conferences as provided in the two sections above quoted may then find their way to the Adjustment Board. Throughout all of these statutory provisions there is no indication that the framers of the statute had any intention to provide a means for adjusting disputes among employees. The only type of disputes for which provision is made are those where a carrier or carriers adopt one position and an employee or employees a contrary position this is

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the only type of dispute which can be referred to the Adjustment Board. Section 3, First (i) of the Act reads as follows:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Summarizing all of the foregoing, therefore, the statute clearly intended to merge the individual interests of individual employees into the collective interest of the craft or class to which they belong. This collective interest can only be expressed through a representative selected for that purpose. Such a representative is empowered to make agreements obligating the individual and to represent him in the consideration of grievances and disputes. In either case the act of the representative will bind the individual, even when against the latter's will. Hence, we conclude that when an individual's rights are bound up in a collective dispute between his employer and the collective bargaining group of employees to which he belongs, the representative has full authority to submit such a dispute to the National Railroad Adjustment Board, if it cannot be otherwise adjusted, to conduct the case before the Board

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according to its best judgment, and to bind the individual by any decision which may be reached. The individual himself is no more a party to the case nor "involved"; therein than is a stockholder of the carrier corporation, and is therefore entitled to no notice of the pendency of the proceeding under the terms of the Railway Labor Act.

The above discussion has been devoted to a consideration of the legal necessity of notice to dissenting employees. In Monograph No. 17 attention is called to the fact that this question has been twice before the courts with varying results. (See Nord v. Griffin, 86 Fed. (2) 481, where notice was held to be necessary, and Estes v. Union Terminal Company, 89 Fed. (2) 768, where the majority of the court held that the plaintiff had received actual notice of the pendency of a case before the Adjustment Board, while Justice Hutcheson in a concurring opinion concluded that no notice was necessary to individual employees. The legal issue, therefore, is still unsettled and may with propriety be left for final decision to the courts.

There remains, however, a further question as to whether the Board, as a matter of policy, should by rule establish a practice of giving notice in such cases. It is our position that notice to individual employees is in some instances unnecessary and in others impossible. Where only a few employees are involved in a dispute, notice can be given, but in such cases, particularly where the carrier is fighting the battle of the dissenting employees, it is absolutely impossible that the case could proceed without actual notice to them. In other instances the number of employees who might be injuriously affected by a decision of the Board favoring em-

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ployees may number into the hundreds, and their exact

identity may not be determinable. Any effective notice to groups of this kind is wholly impossible.

Accordingly, we conclude that the Board is not required by law to give notice to employees who are represented by labor organizations (even though they disagree with the position taken by that organization), and further, that there is no requirement of policy rendering it desirable that such notice be afforded as a matter of rule.

Respectfully submitted,
Frank L. Mulholland,
Clarence M. Mulholland,
Willard H. McEwen,
Attorneys for Railway Labor
Executives' Association.

Mulholland, Robie & McEwen, 1040 Nicholas Bldg., Toledo, Ohio.

Appendix C

General Order No. 13
creating Railway Board of Adjustment No. 1
UNITED STATES RAILROAD ADMINISTRATION
W. G. McAdoo, Director General

General Order No. 13 Washington, March 22, 1918.

Whereas practically all of the railroads now under control of the Director General have in existence at this time agreements with the Brotherhood of Locomotive Engineers, Order of Railway Conductors, Brotherhood of Railroad Trainmen, and Brotherhood of Locomotive Firemen and Engineenen which provide for basis of compensation and regulations of employment; and

Whereas in existing circumstances it is the patriotic duty of both officers and employees of the railroads under Federal control, during the present war, promptly and equitably to adjust any controversies which may arise, thereby eliminating misunderstandings which tend to lessen the efficiency of the service:

It is hereby ordered, That the basis arrived at in the annexed understanding between Messrs. A. H. Smith, C. H. Markham, and R. H. Aishton, regional directors, representing the railroads in the eastern, southern and western territories with the chief executive officers of the Brotherhood of Locomotive-Engineers, Order of Railway Conductors, Brotherhood of Railroad Trainmen, and Brotherhood of Locomotive Firemen and Enginemen, be,

and the same is hereby, adopted and put into effect as of March 22, 1918.

W. G. McAdoo.

Director General of Railroads.

Memorandum of an Understanding Between Messrs. A.
H. Smith, C. H. Markham, and R. H. Aishton, Regional Directors, Representing the Railroads in Their Respective Regions, and Mr. W. S. Stone, Grand Chief Engineer Brotherhood of Locomotive Engineers; Mr. A. B. Garretson, President Order of Railway Conductors; Mr. W. G. Lee, President Brotherhood of Railroad Trainmen; Mr. Timothy Shea, Acting President Brotherhood of Locomotive Firemen and Enginemen.

It is understood, That all controversies growing out of the interpretation or application of the provisions of the wage schedule or agreements which are not promptly adjusted by the officials and the employees on any one of the railroads operated by the Government shall be disposed of in the following manner:

- 1. There shall be at once created a commission, to be known as Railway Board of Adjustment No. 1, to consist of eight members, four to be selected by the said regional directors and compensated by the railroads, and one each by the chief executive officer of each of the four organizations of employees hereinbefore named and compensated by such organizations.
- 2. This Board of Adjustment No. 1 shall meet in the city of Washington, within 10 days after the selection of its members, and elect a chairman and vice-chairman.

who shall be members of the board. The chairman or vice-chairman will preside at meetings of the board, and both will be required to vote upon the adoption of all decisions of the board.

- 3. The board shall meet regularly, at stated times each month, and continue in session until all matters before it are considered.
- 4. Unless otherwise mutually agreed, all meetings of the board shall be held in the city of Washington: Provided, That the board shall have authority to empower two or more of its members to conduct hearings and pass upon controversies, when properly submitted at any place designated by the board: Provided further, That such subdivision of the board will not be authorized to make final decision. All decisions shall be made and approved by the entire board, as herein provided.
- 5. Should a vacancy occur in the board for any cause, such vacancies shall be immediately filled by the same appointive authority which made the original selection.
- 6. All authority vested in the Commission of Eight, to adjust disputes arising out of the application of the Eight-Hour Law, is hereby transferred to the Railway Board of Adjustment No. 1, in the same manner as has heretofore been done by the Commission of Eight. All decisions of a general character heretofore made by the Commission of Eight are hereby confirmed, and shall apply to all railroads under governmental operation, unless exempted in said Eight-Hour Law. Decisions which have been rendered by the Commission of Eight, and which apply to individual railroads, shall remain in

effect until superseded by decisions of the Railway Board of Adjustment No. 1 made in accordance with this understanding.

- 7. The Board of Adjustment No. 1 shall render decisions on all matters in dispute as provided in the preamble hereof, and when properly submitted to the board.
- 8. The broad question of wages and hours will be considered by the Raliroad Wage Commission, but matters of controversies arising from interpretations of wage agreements, not including matters passed upon by the Railroad Wage Commission, shall be decided by the Railway Board of Adjustment No. 1, when properly presented to it.
- 9. Wages and hours, when fixed by the Director General, shall be incorporated into existing agreements on the several railroads, and should differences arise between the management and the employees of any of the railroads as to such incorporation, such questions of difference shall be decided by the Railway Board of Adjustment No. 1, when properly presented, subject always to review by the Director General:
- 10. Personal grievances or controversies arising under interpretation of wage agreements, and all other disputes arising between officials of a railroad and its employees, covered by this understanding, will be handled in their usual manner by general committees of the employees up to and including the chief operating officer of the railroad (or some one officially designated by him), when, if an agreement is not reached, the chairman of the general committee of employees may refer the matter to the chief

executive officer of the organization concerned, and if the contention of the employees' committee is approved by such executive officer, then the chief operating officer of the railroad and the chief executive officer of the organization concerned shall refer the matter, with all supporting papers, to the Director of the Division of Labor of the United States Railroad Administration, who will in turn present the case to the Railway Board of Adjustment No. 1, which board shall promptly hear and decide the case, giving due notice to the chief operating officer of the railroad interested and to the chief executive officer of the organization concerned of the time set for hearing.

- 11. No matter will be considered by the Railway Board of Adjustment No. 1 unless officially referred to it in the manner herein prescribed.
- 12. In hearings before the Railway Board of Adjustment No. 1, in matters properly submitted for its consideration, the railroad shall be represented by such person or persons as may be designated by the chief operating officer, and the employees shall be represented by such person or persons as may be designated by the chief executive officer of the organization concerned.
- 13. All clerical and office expenses will be paid by the United States Railroad Administration. The railroad directly concerned and the organization involved in a hearing will, respectively, assume any expense incurred in presenting a case.
- 14. In each case an effort should be made to present a joint concrete statement of facts as to any controversies.

but the board is fully authorized to require information in addition to the concrete statement of facts, and may call upon the chief operating officer of the railroad or the chief executive officer of the organization concerned for additional evidence, either oral or written.

- 15. All decisions of the Railway Board of Adjustment No. 1 shall be approved by a majority vote of all members of the board.
- 16. After a matter has been considered by the board, and in the event a majority vote cannot be obtained, then any four members of the board may elect to refer the matter upon which no decision has been reached to the Director General of Railroads for a final decision.
- 17. The Railway Board of Adjustment No. 1 shall keep a complete and accurate record of all matters submitted for its consideration and of all decisions made by the board.
- 18. A report of all cases decided, including the decision, will be filed with the Director Division of Labor, of the United States Railroad Administration, with the chief operating officer of the railroad affected, the syleral regional directors, and with the chief executive officers of the organizations concerned.
- 19. This understanding shall become effective upon its approval by the Director General of Railroads and shall remain in full force and effect during the period of the present war, and thereafter, unless a majority of the regional directors, on the one hand, as representing the railroads, or a majority of the chief executive officers of the organizations, on the other hand, as representing the

employees, shall desire to terminate the same, which can, in these circumstances, be done on 30 days' formal notice, or shall be terminated by the Director General himself, at his discretion, on 30 days' formal notice.

Signed and sealed this 22nd day of March, 1918.

- A. H. Smith.
 - C. H. Markham,
- R. H. Aishton,
 Regional Directors for the
 Railroads under Government Control.
- W. S. Stone,
 Grand Chief Engineer
 Brotherhood of Locomotive
 Engineers.
- A. B. Garretson.

 President Order of Railway
 Conductors.
- W. G. Lee,
 President: Brotherhood of
 Railroad Trainmen.
- Timothy Shea,
 Acting President Brotherhood of Locomotive Firemen and Enginemen.

Appendix D

Circular No. 3 issued by the Director, Division of Labor, Regarding Handling of Disputes Not Referable to Railway Boards of Adjustment Nos. 1, 2, and 3

UNITED STATES RAILROAD ADMINISTRATION

W. G. McAdoo, Director General Railroads

DIVISION OF LABOR

Washington, D. C.

CIRCULAR No. 3.

'August 30, 1918.

As set forth in General Order No. 8, issued February 21, 1918, it is the desire of the Director General that harmonious relations be maintained between the officials and employees of all railroads under Federal control.

"All now serve the Government and the public interest only. I want the officers and employees to get the spirit of this new era. Supreme devotion to country and invincible determination to perform the imperative duties of the hour while the life of the Nation is imperiled by war must obliterate old enmities and make friends and comrades of us all. There must be cooperation, not antagonism; confidence, not suspicion; mutual helpfulness, not grudging performance; just consideration, not arbitrary disregard of each other's rights and feelings; a fine discipline based on mutual respect and sympathy; and an earnest desire to serve the great public faithfully and efficiently. This is the new spirit and

purpose that must pervade every part and branch of the national railroad service."

In the adjustment of differences of opinion, not involving rates or amounts of wages or hours, that arise in the relations between the officials and employees, which differences are to be expected, sincere effort should be made to reach a common understanding without the necessity of reference to the Director General, or to the Division of Labor. Where such controversies are not so adjusted, or where questions involving rates or amount of wages or hours are raised, the following methods will be adopted;

- (a) Requests by employees for increases in wages, in addition to increases provided for in wage orders, will be filed only with the Board of Railroad Wages and Working Conditions, to which board has been assigned the duty of hearing and investigating such matters, as provided in Article VII of General Order No. 27.
- (b) The method of securing interpretation of wage orders is prescribed by the Director General in Supplement No. 6 to General Order No. 27 issued this day, and the prescribed method should be followed in cases involving interpretations of wage orders.
- (c) When employees are represented by Railway Boards of Adjustment, the procedure as to all controversies within the scope of their duties will be as directed in general orders creating such boards. The fact that certain employees are not represented by Railway Boards of Adjustment will in no manner deprive them of any of the benefits accruing from such boards. An

assistant to the Director of the Division of Labor has been appointed and a staff of representatives has been organized, for the especial purpose of rendering the same service to such employees as though represented by a Railway Board of Adjustment. Boards of adjustment have been created by understanding with the larger organization of employees for the convenience of handling such matters and to relieve the Director of the Division of Labor of adjusting same. It is not practicable to create Railway Boards of Adjustment, except for the larger organizations of employees.

(d) Requests for adjustments in wages by employees not represented by Railway Boards of Adjustment, which requests are based upon existing practices or adjustments reached through former arbitrations and settlements, will be presented to the proper officials of the railroads, and negotiations will be conducted in the usual manner up to the chief operating officer, or officer designated by him. Should no agreement be reached, and it appear to be necessary to take the matter further, a joint statement of facts (in duplicate) will be prepared by the representatives of the employees concerned and the proper officials of the railroad, and submitted to the Director of the Division of Labor of the United States Railroad Administration. Attached to such joint statement of facts will be such brief arguments by both parties to the controversy as is believed desirable by those When an adjustment is not then reached concerned. through correspondence, a representative will be assigned. to investigate, and if by his assistance no agreement is

then reached, the matter in controversy will be referred again to the Director of the Division of Labor.

- (e) Personal grievances or controversies arising under interpretation of wage agreements, and all other disputes arising between officials of a railroad and its employees not represented by Railway Boards of Adjustment, will be handled in the usual manner by the individual, his representative, or by committees of employees, up to and including the chief operating officer of the railroad, or officer designated by him, when, if an agreement is not reached, the chairman of the committee of employees and the officer of the railroad will refer the matter to the Director of the Division of Labor, in the same manner as provided in paragraph (d) of this circular.
 - represented by committees, and negotiations can not be conducted in the usual manner, matters of complaint will be taken up with the proper officials of the railroad. When such employee or employees desire to appeal to the Director General, a complete statement of the cause of complaint will be filed by such employee or employees with the Director of the Division of Labor. When an adjustment is not reached through correspondents, a representative will be assigned to investigate; and if by his assistance no agreement is then reached, the matter in controversy will be referred again to the Director of the Division of Labor.
 - (g) General Order No. 8 suspended negotiations for revision of schedules or general changes in conditions affecting wages and hours pending decision of the matter

by the Director General, which was accomplished by General Order No. 27. No order has since been issued either prohibiting or directing that negotiations for revisions of working conditions be undertaken. This matter is left to follow the usual course, except that all requests for increases in wages, reduction of hours, or special rates of overtime will be taken up directly with the Board of Railroad Wages and Working Conditions. Where working conditions are not agreed upon by committees of employees and the officials of the railroads, a joint statement of the points at issue will be prepared and filed with the Director of the Division of Labor, attaching thereto. such brief arguments as may be desired. When an adjustment is not then reached through correspondence a representative will be assigned to investigate, and if by his assistance no agreement is then reached, the matter in controversy will be referred again to the Director of the Division of Labor.

Nothing herein contained has reference to employees of railroads not under Federal control.

W. S. Carter,.

Director Division of Labor.

Approved:

W. G. McAdoo,

Director General of Railroads.

NO. 27

HARLES ELMORE CROPLEY

IN THE

Supreme Court of The United States

OCTOBER TERM, 1943

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY (an unincorporated association),

Petitioner.

vs.

SOUTHERN PACIFIC COMPANY AND GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (an unincorporated association),

Respondents.

Brief for General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, Respondent

DONALD R. RICHBERG,
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L. F. KUECHLER,
Attorneys for Said Respondent.

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1943

NO. 27

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COM-PANY (an unincorporated association),

Petitioner,

V8.

Southern Pacific Company and General Grievance Committee of The Brotherhood of Locomotive Firemen and Enginemen (an unincorporated association),

Respondents.

Brief for General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, Respondent

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 792) is reported in 132 F. (2d) 194. There was no opinion of the District Court, but its findings of fact and conclusions of law are found in the record. (R. 44-57)

JURISDICTION

The decree of the Circuit Court of Appeals was entered on November 18, 1942. (R. 827) A petition for a rehearing was filed by respondent Engineers (R. 828) and denied on January 22, 1943, with a modification of the opinion. (R. 828-829) The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C., Sec. 347).

STATUTE INVOLVED

The statute involved is the Railway Labor Act (Act of May 20, 1926, as amended by the Act of June 21, 1934 (45 U.S.C., Secs. 151-164), the pertinent parts of which are printed in the appendix to the cross-petition filed in the companion case (Docket No. 41) to the present case, Docket No. 27. The entire Act is printed in the appendix to the brief of the United States as amicus curiae filed in these two cases, so that a further reprint in this brief seems unnecessary.

STATEMENT OF THE CASE

The case began with the filing of a complaint in the District Court by present petitioner (the Engineers) seeking, through a declaratory judgment, to have the court declare invalid, as violating the Railway Labor Act, certain provisions of a collective bargaining contract between the present respondent (the Firemen) and the respondent railroad, the Southern Pacific Company. (R. 2-13)

The Engineers complained, first, that the Firemen's Brotherhood had made an invalid agreement with the Railroad by which members of the Brotherhood, whether working as engineers or as firemen, were con-

ceded the right to be represented by the Firemen's Brotherhood in the handling of their "grievances"; and, second, that the Firemen's Brotherhood had made certain invalid agreements with the Railroad which had the effect of regulating the employment of engineers.

The Firemen defended the validity of their agreements on the following basis: First, that a member of the Firemen's Brotherhood had a right under the Railway Labor Act, and a constitutional right, to be represented in the prosecution of his individual grievance by a representative of his own choosing; and Second, that the alleged regulations of engineer employment included within the Firemen's contract were proper and valid conditions imposed on the grant by the Firemen to Engineers of the privilege of having an engineer (forced out of engineer service in a reduction of force) demoted to the position of fireman in the order of his seniority—thereby displacing any fireman who had less seniority.

The District Court sustained the contentions of the Firemen in its findings of fact and conclusions of law (R. 44-57) and entered a decree in accordance with its conclusions, sustaining the validity of all the challenged provisions of the Firemen's contract. (R. 58-59)

The Circuit Court of Appeals sustained the District Court entirely on the so-called representation issue, holding as follows:

"We hold that so far as concerns an engineer member of the Firemen's Brotherhood, the district court's interpretation of Article 51, Section 1 of the Firemen's Schedule, that the Firemen's Committee may be his representative in the arbitration of his individual grievances under the provisions of the Act, is correct, and affirm its judgment to that effect." (R. 815)

The Engineers petitioned for and were granted the

present writ of certiorari to review this judgment (Docket No. 27).

The Circuit Court of Appeals also affirmed the judgment of the District Court as to the validity of the Firemen's contract imposing conditions upon the exercise by the engineers of the demotion privilege, but with an amendment to the judgment of the District Court construing one provision of the Firemen's contract as partially valid and partially invalid. Thereupon, the Firemen filed a cross-petition for and were granted a writ of certiorari to review this part of the judgment of the Circuit Court of Appeals (Docket No. 41).

The present respondent, in its brief as petitioner in No. 41, has made a full statement of the underlying facts although related particularly to the so-called mileage regulation issue. The petitioner in the present case (No. 27) has made a reasonably accurate (although argumentative) statement, and the Southern Pacific Company, respondent, has made a further statement in its brief filed herein. In view of the simplicity of the issue presented under the present petition, and in view of the fact that both the lower courts have ruled with the Firemen on this issue, it seems unnecessary to burden this Court with any further statement of the case.

THE QUESTION PRESENTED

The question presented in this case is simply this: Is there any provision of the Railway Labor Act which denies to an individual employee of a railroad the right to be represented in the handling of his individual grievance by a representative of his own choosing?

Perhaps it should be explained that a "grievance" is a claim against a railroad made by an individual.

employee w.) is personally aggrieved by some management action which may consist of (1) denying him proper payment for service performed, or (2) denying him the right to an assignment to which he thinks himself entitled under the rules establishing his seniority, or denying some other right to a particular employment, or (3) imposing on him a discipline which he believes is unjustified, which may vary from charging him with demerits to a suspension or discharge from the service.

SUMMARY OF ARGUMENT

I

The Firemen contend that the right of an individual to prosecute his individual claim for money, or for an opportunity to work, or to set aside unjustified discipline, is an inherent constitutional right and that this right includes the right to select his own representative to prosecute his individual claim. It follows that unless the Railway Labor Act specifically denies this individual right, and can be constitutionally construed to deny such a right, the provision of Article 51, Section 1 of the Firemen's agreement, by which the Railroad concedes this right, must be valid.

П

The Railway Labor Act does not deny but, on the contrary, affirms the right of an individual railway employee to prosecute his grievance through a representative of his own choosing.

Ш

No provision of the Railway Labor Act could be construed to deny to the individual the right to prosecute his own claim through a representative of his own choosing without violation of the Fifth Amendment.

ARGUMENT

I

A railway employee has an inherent right to prosecute his individual claim through a representative of his own choosing.

The provision of the Firemen's agreement which is challenged by the Engineers reads as follows:

"ARTICLE 51.

"Adjustment of Differences.

"Sec. 1. The right of any engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule involved, is conceded." (R. 616)

The Engineers contend that the inclusion of the word "engineer" in the above-quoted provision represents an invalid attempt by the Firemen to agree with the Railroad upon the right of the Firemen's Brotherhood to represent an engineer member in the prosecution of a grievance which he may have arising out of his employment as an engineer. The sole apparent basis for this contention is the provision of Section 2, Paragraph Fourth, of the Railway Labor Act, which reads:

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

The plain meaning of the foregoing provision is that the organization selected by the majority of any craft or class of employees is the exclusive representative of that craft or class in collective bargaining, or in any action in which the craft or class as a whole is to be represented. The Act does not provide that the majority of any craft or class shall have the right to determine who shall be the representative of each and every employee of the craft or class in the prosecution of his individual rights under a craft agreement.

It has been held by the Supreme Court in Virginian Railway Company v. System Federation, 300 U.S., 515, at page 557, that the provisions of the Railway Labor Act "do not require petitioner to enter into any agreement with its employees, and they do not prehibit its entering into such contract of employment as it chooses, with its individual employees:"

Under this construction of the Act, it would seem that the Railroad is not required by law to enter into any agreement with the Engineers giving the Engineers an exclusive right to represent all engineers in grievances, and that the Railroad could properly enter into a contract with any organization of employees, conceding the right of the individual members of that organization to be represented by their organization in the prosecution of their grievances.

Section 1 of Article 51 of the Firemen's contract may well be regarded as being only an incidental part of the Firemen's craft agreement—which is for the purpose of fixing the wages and working conditions of firemen. It is additionally an agreement in behalf of individual employees who are members of the Firemen's Brotherhood, conceding to them the exercise of an inherent right to be represented in prosecuting their

individual claims by the organization to which they belong. This organization provides them with insurance and renders many services in addition to acting as a representative in collective bargaining. This construction of the agreement is further stressed in the brief filed herein by the Southern Pacific Company, respondent (p. 25).

In *Illinois Cent. R. Co. v. Moore*, the right of an individual railway employee to sue for damages for wrongful discharge was sustained by the Circuit Court of Appeals; and, although the case was reversed on other grounds, the correctness of this ruling of the Circuit Court was apparently accepted, the lower court having held:

"The collective agreement as such is made, defended and changed by the union, but the rights of each employee employed under it are his own, and he may waive or assert them himself as he sees fit." (Illinois Cent. R. Co. v. Moore (5th C.C.A., 1940), 112 F. (2d) 959, 965; see Moore v. Illinois Cent. R. Co., 312 U. S. 630, 635-636)

The constitutional right of an employee to select his own representative to prosecute his individual claim and to sustain his individual property rights will be discussed under Point III. But the mere statement of the Engineers' claim to a statutory right to represent a litigant against his will should lead one to scrutinize most closely any provision of the Railway Labor Act which, according to the Engineers' contentions, is supposed to render support to the deprivation of an individual right specifically protected by the Constitution of the United States.

¹ Emphasis throughout this brief is ours unless otherwise indicated.

The Railway Labor Act does not deny, but on the contrary affirms, the right of an individual employee to prosecute his grievances through a representative of his own choosing.

Turning now to the Railway Labor Act itself, we find that the specific right of the individual to be represented in the prosecution of grievances by a representative of his own choosing is repeatedly affirmed.

Section 2, Second, reads as follows:

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Of course, the Engineers may argue that all the employees of a craft are interested in the enforcement of rights arising under the craft agreement. But it is plain that when an employee sues a railroad to recover wages wrongfully withheld or to rectify the withholding of employment, or to set aside a wrongful discharge, the craft as a whole is not "interested in the dispute" in a legal sense. Even though the craft might wish to intervene in a particular case, the right to prosecute and to settle the individual claim is the right of an individual and he is the person primarily interested in the dispute, who is entitled to select his own representative to represent him.

Section 3, First (i) and (j), provide as follows:

[&]quot;(i) The disputes between an employee or group of employees and a carrier or carriers growing out

of grievances or out of the interpretation or application of agreements concerning rates of pay, rules. or working conditions, including cases pending and unadjusted on the date of approval of this Act. shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(i) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to

them."

In order to understand the full application of the foregoing provisions to the present issue, it should be explained how grievance disputes have been handled for many years on the American railroads, both prior to and since the adoption of the Railway Labor Act. The statute in referring to the "usual manner" of handling such disputes makes it plain that prior practice was to be maintained in continuing the handling of such disputes up to and including the chief operating officer of the carrier designated to handle such disputes.

This prior practice is described in Finding 7 of the District Court (R. 48-50) which is amply supported by testimony of witnesses for the Firemen (R. 204-207. 240-241, 265-268), for the Engineers (R. 140-142, 146-147), and for the Railroad (R. 149-151). It shows a uniform acceptance of the right of the aggrieved employee to select his own representation.

Then the Act provides for an additional method of

final adjustment by setting up an Adjustment Board with four divisions to which unsettled disputes can be appealed. These boards are given the power under the Act to make a final and binding award and, since they are bi-partisan, equally-balanced boards (half the members representing labor organizations and half representing railroad management), provision is made for the selection of a referee to sit with a deadlocked adjustment board and bring about a decision.

It must be evident that since the Act specifically provides that parties to grievance disputes "may be heard either in person, by counsel, or by other representatives, as they may respectively elect," it was understood that in the previous handling of a dispute in the "usual manner," the aggrieved employee would be represented by such a representative as he might

select.

The claim of the Engineers that, prior to presentation of a dispute to an adjustment board, the aggrieved employee may be compelled to accept a representation which he does not wish, is not only illogical but would, in fact, prevent the exercise by an aggrieved employee of the right specifically given in the statute to prosecute his case before an adjustment board with the aid of his self-chosen representative. If, for example, a member of the Firemen's Brotherhood were compelled to ask the Engineers' Committee to represent him, in handling his dispute with the Railroad management, the Engineers' Committee might refuse to prosecute his case, claiming that it was not meritorious, or might make a settlement of his case regardless of his wishes. and then he would have no dispute to bring to an adjustment board and no adjustment board would have any jurisdiction to hear him.

Furthermore, it should be understood that the labor members of an adjustment board are designated by

the labor organizations and, as a matter of policy, they have established the practice that cases will not be received except when the appeal to the board is approved by the organization representing the employee. Thus, the claim of the Engineers amounts to this. They would deny to any man working as an engineer, who is not a member of the Engineers' Brotherhood, the right to prosecute any grievance except by the favor of the Engineers' Brotherhood. There are thousands of engineers who have never joined the Engineers' Brotherhood, but remain members of the Firemen's Brotherhood, which is particularly advantageous to junior engineers since they will be likely to render more service as firemen than as engineers for many years.2 There are a great many engineers who are members of both Brotherhoods. The sole purpose and effect of the contention of the Engineers is to compel anyone working as an engineer to become a member of the Engineers' Brotherhood.

Yet, one of the major protections of the Railway Labor Act is the right of self-organization established for railroad employees in Section 2, stating the general purposes of the Act. These purposes are stated to include: "(2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; * * * (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering

¹ This is pointed out in the Report of Attorney General's Committee on Administrative Procedure quoted in the Engineers' brief in the lower court.

Between nineteen and twenty thousand Engineers are members of the Firemen's Brotherhood. (R.195)

rates of pay, rules or working conditions."

To carry out these general purposes, Section 2, Paragraphs Third and Fourth prohibit a railroad from exercising any influence in the choice of representatives by employees. The third paragraph reads as follows:

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier."

The fourth paragraph provides (following the first two sentences previously quoted) that:

No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions:

It should be apparent that any railroad making an agreement with a labor organization giving that organization an exclusive right to represent all employees of one craft in prosecuting their individual grievances would be exerting a powerful influence upon all such employees to join that labor organization and to abstain from joining or remaining a member of another organization which was thereby denied the right to represent its members in prosecuting grievance cases.

When a railroad bargains with the labor organization selected by the majority vote of a craft, and declines to bargain with any organization representing only a minority of the craft, the railroad is simply obeying the mandate of the law. The Congress found it necessary to establish majority rule and to deny to minority organizations the right of collective bargaining because of the practical necessities of the situation. Obviously, there should be only one craft agreement. The making of a multitude of agreements covering the same work would not only make a farce of collective bargaining but would also be destructive of any efficiency in the distribution and handling of work. To sanction collective bargaining by several organizations would be to sanction a contract between the employer and the representative of a minority of the employees which would not be productive of industrial peace and harmony. Accordingly, as a practical necessity, in establishing and preserving collective bargaining in behalf of the employees, it became necessary to establish the right of the representatives chosen by the majority to bargain exclusively in behalf of all the employees of a craft.

But the majority rule is obviously a qualification of the major purpose of the Railway Labor Act, which is to insure to railway employees the right of selforganization and the right to representation by representatives of their own choosing. The Act neither recognizes nor grants rights to organizations of employees—except the right of organizations to designate members of the Adjustment Board. All other rights are granted to employees and these rights are exercised by organizations, not as organization rights, but as employee rights exercised by their representatives. Then the right of the individual to associate with his fellows, to create or to join organizations according to his own free will, is carefully preserved throughout the Act. There is no logical basis for contending that the inherent right of an individual to prosecute his own grievance should be denied in order to create an organization right to coerce employees into joining the organization.

The argument of the Engineers has two phases: First, is the technical claim that one sentence in Section 2, Paragraph Fourth, gives the craft organization an exclusive right to represent all individual employees of any craft because that sentence reads: "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the

craft or class for the purposes of this Act."

The argument is that "the purposes of this Act" cover everything provided for in the Act, the making and interpretation of agreements, and their enforcement either as a whole or in individual cases. But even if "the purposes of this Act," as a phrase, did include everything covered by the Act, the argument of the Engineers ignores the limitation in the words "shall be the representatives of the craft or class." This phrase obviously limits the application of the sentence to those matters which concern the craft or class as a whole and where the craft or class is represented and not the individual members thereof prosecuting their individual interests.

In order to evade this counter argument, the Engineers progress their argument into the second phase which is a contention that the craft as a whole is concerned with the enforcement of the craft agreement in individual cases, and that therefore the craft representative must be allowed to control all cases involving the application of a craft agreement. The Engineers cite a number of cases arising under the National Labor Relations Act and a number of commentaries on that Act. Many of the purposes and the provisions of the National Labor Relations Act are very different from those of the Railway Labor Act. But even the position taken by the National Labor Relations Board, extreme as it is in the subordination of individual right to collective interest, does not support the Engineers' argument in the present case.

For example, the Engineers' brief quotes from Matter of North American Aviation, Inc., 44 N.L.R.B.,

604, as follows:

"* * After a contract has been negotiated and executed, it is continuously modified and supplemented by interpretations and precedents made by employer and employees from day to day in the course of their operations under the contract. This interpretation of the contract, no less than its negotiation, constitutes an integral part of the collective bargaining process." (Brief, p. 34)

It can be readily conceded that a formal or definitive interpretation of a contract made by the parties thereto becomes a part of the agreement, and that the making of such an interpretation is a part of the collective bargaining process. But the right of Engineers to control any such interpretation of a contract which they have negotiated is accepted and preserved in the plain language of the rule in the Firemen's agreement to which the Engineers now object.

Article 51 of the Firemen's agreement, which is the subject of the present controversy, provides specifically for the right of an engineer or fireman to be represented by his own organization, but provides that his grievance is to be handled "under the recognized interpretation of the general committee making the schedule involved." Accordingly, when a Firemen's Committee represents a fireman or an engineer in a grievance arising under the Engineers' schedule, the Firemen's Committee cannot claim or establish any interpretation of the Engineers' schedule contrary to the recognized interpretation of the Engineers' Committee. If there is any doubt as to what is the recognized interpretation, the carrier is free to consult the Engineers' Committee. As a matter of fact, it is the custom throughout the railroads and on the Southern Pacific, as shown in this case, for the Engineers' Committee to be notified of any claim that is advanced under the Engineers' schedule. So the Engineers' Committee has ample opportunity to make sure that the recognized interpretation of the schedule is understood. Under these circumstances, the Firemen's Committee has no power to interpret the Engineers' schedule in any way contrary to the recognized interpretation of the Engineers' Committee.

But, as a horrible example of an evil they are seeking to prevent, the Engineers refer in their brief (p. 39) to a case where it is alleged that the Firemen's Committee, in behalf of an engineer member, compromised his claim by allowing him one half of the amount claimed to be due under the Engineers' schedule, this allowance being specifically made "without prejudice or reference to the provisions of Engineers' agreement."

The Engineers argue that such a practice is not a settlement in accordance with the "recognized inter-

pretation" of the Engineers' schedule—that it undermines enforcement of the schedule and violates the rule that controversies will be handled in accordance with the recognized interpretation. Now as a matter of fact, this claim was handled in accordance with the recognized interpretation and the settlement was made without prejudice to the Engineers' agreement for half the amount apparently due if the "recognized interpretation" had been applied, as contended in behalf of the Engineers.

What was actually done in behalf of the individual engineer represented by the Firemen's Committee was to exercise his individual right to accept less than his full claim, in satisfaction thereof. This was certainly the exercise of an individual right which did not properly concern the Engineers' organization.

The alternative of this settlement might have been a denial of the claim by the Railroad, an appeal to the Adjustment Board, a long delay, and perhaps, in the end, even under the "recognized interpretation" of the contract, the employee might have failed to sustain his claim. The action he took was clearly the exercise of an individual right arising under a contract made for his benefit, and did not involve in any way the assertion or relinquishment of any craft or class right.

If the contention of the Engineers were sustained, the theory of individual rights and individual freedom of labor which underlies American labor law, and the constitutional protections of individual liberty and individual rights of property would lose all force among the wage earners of this country. It is the present prevailing theory that individual workers should be free to join or not to join labor organizations; that they should be free to accept or to decline, or to leave employment at their individual will; that no matter how

the terms of a contract of employment are made, whether individually or collectively through a trade agreement, the individual worker is free to insist upon the enforcement of his rights under his contract of employment, and is free to prosecute any individual claim against his employer for wages due or for opportunities of employment to which he has become legally entitled, or to defend against discipline unjustly imposed.

It is unnecessary here to stress further the point made in the brief filed herein by the Southern Pacific Company, respondent, arguing that the practical effect of sustaining the Engineers' contention would be to establish a "closed shop" and to make it practically impossible for a railroad employee to obtain or to enjoy the fruits of his employment except by becoming and remaining a member of the craft organization holding the contract covering his line of work. But the point made in the brief of the Southern Pacific Company is sound. The provisions of the Railway Labor . Act not only fail to encourage but, in practical effect, deny to any organization the right to establish and to maintain, through contract with a railroad, a closed shop. It is a fact that railway employees are almost universally organized into a limited number of craft organizations, but the strength of such organizations and the solidarity of their membership result from and depend upon the strength of voluntary association, and do not arise out of any coercion imposed on the employees by an organization making a closed shop contract with a railroad.

It does not seem necessary to analyze further the detailed provisions of the Railway Labor Act, especially since such an analysis has been presented in the

The Attorney General agrees that the Act forbids a closed shop contract. Opinions of the Attorney General, Vol. 40. Opinion 59.

present case by the Southern Pacific Company which is properly taking the position of not seeking to favor. the interests of any organization of its employees but which is profoundly interested in maintaining the principles of the Railway Labor Act. This Act was written. as has been recognized in previous opinions of the Supreme Court, by the collaboration of railway management and railway labor, and its successful operation for over seventeen years has resulted from the fact that the Act makes extensive provision for the voluntary cooperation of management and labor, with the mediatory aid of government, imposing little compulsion on any party except the obligation to utilize all available methods for the peaceful adjustment of economic controversies. A major strength of the Act has lain in the rights granted and in the protections. extended to individual employees and the avoidance of coercion of individual employees by government, by management, or by labor organizations.

We have sought in this brief to avoid mere duplication of arguments ably presented in the brief filed herein in behalf of the Southern Pacific Company, respondent, and in behalf of the United States as amicus curiae, which support the validity of the representation provision in Article 51, Section 1, of the Firemen's contract. But it seems proper to emphasize here again that the administrative construction of the Railway Labor Act by the tribunals established for the administration of the Act gives vigorous support to the position of the Firemen.

The National Mediation Board, established in Section 4, is required from time to time to make an authoritative ruling giving its interpretation of the law. On September 21, 1934, the chairman of the Boardwrote a letter to the vice president of the Firemen's Brotherhood and the general superintendent of the

Florida East Coast Railroad sustaining the right of the Firemen's Brotherhood to represent its engineer members in the prosecution of their grievances. After reviewing the common practice on the railroads in the handling of grievance cases, regarding which the Board was obviously well informed, the Board reached the following conclusion:

"In view of this common practice, the Board is of the opinion that in conferences between carriers and employees to consider grievances of employees who have already been 'disciplined and have carried their cases to higher operating officials, the 'usual manner' of handling such cases has been to permit aggrieved employees to designate representatives for such conferences without regard to whether the representatives were employees of the carrier or not, or whether they were officers of an organization which held a contract or not." (R. 235)

In a letter dated January 4, 1936, addressed to the grand chief engineer of the Engineers' Brotherhood and to the president of the Firemen's Brotherhood, exhaustively reviewing certain jurisdictional disputes between the organizations, the views of the National Mediation Board were set forth by one of its members. Judge Carmalt, in great detail and included the following statements:

"* * This Board has ruled that a contract giving exclusive right of representation for grievance cases to any Organization is unlawful under the amended Law." (R. 217)

This letter went on to quote from another letter addressed to the management of the railroad, reading in part as follows:

"The National Mediation Board is compelled to view as a matter of law that the supplemental contract effective October 17, 1928, with the B. of L. E. is absolutely illegal, since the Company interprets it to give to the engineers' committee a right to represent any employee who desires another representation. No contract between a railroad employer and an organization of employees can give . to that organization any right to represent an individual employee unless the employee himself assents. The right of an individual to designate the representative of his choice is guaranteed by Section 2, (Second) and the carrier is prohibited by Section 2, (Third) from interfering, influencing, coercing or seeking in any manner to prevent the designation by its employees of their representatives. There is no possible escape from this conclusion as it seems to us, since Section 2, (Eighth) provides that Paragraph Third of the Section is made a part of the contract of employment between the carrier and each employee." (R. 217-218)

On April 14, 1937, the President appointed an Emergency Board, pursuant to the provisions of Section 10 of the Railway Labor Act, to investigate a serious dispute between the four major transportation organizations, Engineers, Firemen, Conductors, and Trainmen. and the Southern Pacific Company. This dispute involved some forty-one items, the first of which arose out of the claim of the Engineers to an exclusive right to represent all engineers in grievance cases. Thus the very question here presented was presented to and decided by the administrative tribunal of highest authority to be created under the Act, and it is worthy of note that the Board was composed of an outstanding lawyer of San Francisco who had been previously attached to the Department of Justice, a Washington lawyer who had previously been a judge, and a college president who has served the government in many

important positions, a thoroughly impartial Board composed of men of outstanding experience and ability. This Board held that the contention of the Engineers in that case, and here repeated, "offends the objects and principles of the Railway Labor Act and infringes upon the rights intended to be secured by that Act," and further held as follows:

"* * The whole spirit and intention of the Act is contrary to the use of any coercion or influence against the exercise of an individual's liberty in his choice of representatives in protecting his individual rights secured by law or contract." (R. 736-737)

We submit that the entire discussion by this Emergency Board on the question here presented, which appears in the record on pages 727-743, effectively demonstrates the utter lack of any merit in the Engineers' contentions in the present case when the Railway Labor Act is construed in the light of a practical understanding of the long-established methods and practices of the American railroads in the settlement of grievance disputes with their employees. These disputes, ever since the adoption of the Railway Labor Act, have been uniformly settled through negotiation between the management of the railroad and the organization selected by the employee to represent him.

It seems strange that at this late day an attempt should be made to coerce individual employees in the exercise of what are peculiarly their individual rights in the enforcement of their individual claims under contracts made for their benefit. We submit that there is no justification in the Railway Labor Act for the Engineers' contentions. Not only does the Act specifically provide for the protection of individual rights but those rights which would be denied by the Engi-

neers in the present case are fortified by a constitutional protection which the Congress could not disregard and which, we submit, the Congress has shown no intention to disregard.

Ш

A railway employee could not be constitutionally deprived of the right to prosecute his individual claim through a representative of his own choosing.

It would seem unnecessary to argue at length that an individual has a constitutional right to prosecute his individual claim to money, or to rights of monetary value, through a representative of his own choosing. But in this case, not only do we find counsel for petitioner denying that right but we are also confronted with an opinion of the Attorney General, cited in the brief of the United States (p. 80), in which he has taken the position that the Engineers and the Railroad could make an agreement giving to the Engineers the exclusive right to act as representatives of members of the engineers' craft in the handling of grievances. The Government brief takes the position that the Railway Labor Act itself does not grant the exclusive right claimed by the Engineers, but that the Act does not prohibit an agreement with the railroad establishing such an exclusive right.

We must register an emphatic dissent from this opinion, which not only is in conflict with the opinion of the Circuit Court of Appeals in the present case, but is in conflict with a long line of decisions of the Supreme Court.

Apparently the attorneys for the Engineers and the attorneys for the Government agree that a federal

statute could be enacted giving to a craft organization the exclusive right to represent all employees working in that craft (regardless of membership in the organization, and regardless of individual desire) to prosecute individual grievances arising under or out of a craft agreement. Happily, the attorneys for the Government do not agree with the attorneys for the Engineers that the Railway Labor Act has granted this exclusive right. But presumably they do agree that the Act does not forbid a contract between the Engineers and the Railroad through which the Railroad could agree with the Engineers to establish such an exclusive right, and both blithely disregard the protections of individual liberty supposed to be afforded by the Fifth and Fourteenth Amendments.

This issue having been raised, we submit that it is of utmost importance for this Court to affirm the constitutional right of the individual to prosecute his individual claim through representatives of his own choosing.

The Fifth Amendment has often been invoked for the protection of insubstantial rights or rights of the individual that must yield to superior rights of government or other individuals. But in the present instance, we submit that the contentions of the Engineers, in part supported by the attorneys for the Government, seek the destruction of an elementary right which has been consistently preserved by the Supreme Court throughout our history.

We are compelled to suggest the desirability of a recurrence to fundamental principles. The Fifth Amendment provides that "no person shall * * * be deprived of life, liberty, or property without due process of law."

It was held in Holden v. Hardy, 169 U. S. 366, 389:

"This court has never attempted to define with precision the words 'due process of law,' nor is it necessary to do so in this case. It is sufficient to say that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard, as that no man shall be condemned in his person or property without due notice and an opportunity of being heard in his defense. * * * *

"* * Recognizing the difficulty in defining, with exactness, the phrase 'due process of law,' it is certain that these words imply a conformity with natural and inherent principles of justice, and forbid that one man's property, or right to property, shall be taken for the benefit of another, or for the benefit of the state, without compensation; and that no one shall be condemned in his person or property without an opportunity of being heard in his own defense."

In Powell v. Alabama, 287 U. S. 45, 68, this Court held:

"What, then, does a hearing include? Historically and in practice, in our own country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. * * ""

It would probably be conceded that in a judicial proceeding a claimant seeking a judgment for money or for the protection or assertion of any valuable right could not be compelled by a constitutional statute to accept the services of a lawyer whom he did not wish to represent him, or denied the services of a lawyer whom he had selected, who was willing to represent

him and who was qualified to act. The same principle which fully sustains the right of a litigant to select his own counsel certainly applies to any administrative proceeding sanctioned or required by statute to adjudicate individual rights. It is questionable whether an individual could be required by statute to accept a representation not of his own choosing or, in the alternative, to prosecute his case by himself (which seems to be one suggestion of the Engineers to mitigate the harshness of their contention) even if the issues were so simple that an individual might not require technical services. But in the present case, there is a need for expert, experienced aid, without which a claimant would be as helpless as a layman in court-and, in fact, would not have even the aid of an impartial judge. anxious to ascertain the facts and to administer justice.

The railway labor contracts are highly technical documents which it is often difficult for lawyers not

familiar with railroad work to construe.

In conferences with management officials, resort is had to precedents available only in the files of the organizations and the railroad management. Lengthy and highly technical arguments are held regarding the meaning of contract requirements, and the facts which would be determinative of the claim are often involved in hot dispute. Testimony is gathered and needs proper presentation, statements of facts are prepared, in which the management recital and the employee's recital often differ markedly.

While a grievance dispute is being handled in conference in the "usual manner," it will progress from operating officials of lesser authority up to the chief operating officer of the carrier, who is designated to handle such disputes. As the case moves upward, it must be obvious that the individual employee will be more and more at a disadvantage in handling his own

case. So, all through the conference phase, the employee finds it vital to a proper presentation of his claim to have the aid of the experienced committees and officers of his organization who are trained in this work and trained in meeting and arguing with railroad officials. Then, if the dispute is not settled, it is, under the law, referred by petition of either party, or both, to the appropriate division of the Adjustment Board "with a full statement of the facts and all supporting data bearing upon the disputes." It should be obvious that no individual employee can carry his claim up to an adjustment-board in an effective manner, and prepare the record, upon which it will be finally decided, in a manner adequate for a full and fair presentation of his side of the case. The use of labor organization representatives in support of these grievances is just as vital to an opportunity to be heard as the services of a lawyer in a judicial proceeding.

Yet, it is the proposition of the Engineers, which is strangely supported, in part, by the attorneys for the Government, that under a statute of the United States a railway employee can be denied the right to prosecute his own claim through a representative of his own choosing; and that he can be compelled, not merely to accept a representation chosen for him, but he can be compelled to accept a representation which may be hostile to him personally and either unwilling to advance his claim or, at best, indifferent to the success of the prosecution.

The claim of a fireman arising out of his service as an engineer may involve a substantial sum of money. He may have been deprived of a run to which he was entitled and deprived of a large fraction of the earnings to which he was entitled for a considerable period of time. The Engineers' Committee may be frankly hostile to the claim because a member of the Engineers'

Brotherhood may have obtained the run and the earnings to which the member of the Firemen's Brotherhood was entitled. The fireman serving as an engineer may be disciplined for some alleged wrongdoing for which he disavows any responsibility and for which he might claim some other engineer was at fault. Yet, according to the Engineers' contention, he would be compelled to have his appeal from an improper discipline handled by an organization either entirely willing or anxious to have him disciplined.

The shocking injustice resulting from an acceptance of the Engineers' contention has evidently forced their counsel to take the position that a non-member of their organization would not be compelled to accept their representation because he could either prosecute his claim himself or he could bring a suit against the railroad and employ-his own attorney.

In the first place, it should be obvious that an employee would be denied a genuine hearing if he were compelled to prosecute his case without technical assistance.

In the second place, the right to sue in court is illusory and commonly a valueless remedy. A great many claims are small in amount and, for even substantial claims, the cost of a lawsuit and the difficulty and embarrassment of carrying on a lawsuit against one's employer would be practically prohibitive.

In the third place, the Railway Labor Act specifically makes it the duty of all officers and employees of railroads to exert every reasonable effort to settle all disputes, including grievance disputes, and provides that they shall be considered and, if possible, decided with all expedition, in conference. Then the Act provides for handling these grievance disputes up to the chief operating officer and then to an adjustment board which has power to make a binding decision. So the

law has laid down a procedure which is practically mandatory even though it does not exclude resort to a lawsuit. The law provides for an administrative process and machinery for settlement of these disputes; and it should be apparent that in such a machinery the elementary requirements of due process of law should be observed just as well as in judicial proceedings. The detailed requirements may be different, and informality of procedure may be permissible. But, if by statute a procedure is provided for the settlement of rights of property, then it should be evident that the fundamentals of due process of law—notice, and opportunity to be heard—must be observed.

In Nord v. Griffin, 86 F. (2d) 481, proceedings were carried on before the National Railroad Adjustment Board which resulted in an award in favor of the Brotherhood of Railroad Trainmen and against a railroad company. But, through the enforcement of this award, a switchman, not a member of the Brotherhood. was deprived of the job to which he claimed to be entitled by virtue of his seniority. He brought suit in the United States District Court, seeking an injunction against the enforcement of the award. The injunction was granted and the decree of the District Court appealed to the Circuit Court of Appeals for the Seventh Circuit. The Circuit Court held that the switchman was entitled to seniority rights furnishing him regular employment; that he had been deprived of work paying him \$1500.00 a year. It was argued by the railroad that the switchman appellee was (in the language of the court) "bound by an order of an administrative board in a proceeding to which he was not a party, entered at a hearing of which he had no notice." The court held, page 484:

"* * The mere statement of the proposition is conclusive of its unsoundness. The rights of plaintiff are protected by the Fifth Amendment."

After citing Ochoa v. Hernandez y Morales, 230 U.S. 139, to the effect that due process of law "inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing," the court concluded its opinion as follows:

"Clearly the award, so far as appellee was concerned, was in violation of his rights under the Fifth Amendment to the Constitution, and it was the court's duty, with jurisdiction of the subject-matter and of the parties, to award the injunction. "The decree is affirmed."

. Certiorari was denied in Nord v. Griffin, 300 U.S. 673.

We may refer again in this connection to Moore v. Illinois Cent. R. Co., 312 U. S. 630. In this case, Moore, a member of the Brotherhood of Railroad Trainmen. brought suit for damages against the railroad, claiming that he had been wrongfully discharged contrary to the terms of the contract between the Trainmen and the railroad. Although Moore lost his suit on the basis of the running of the Mississippi statute of limitations. the question was presented in the Supreme Court as to whether Moore should have first exhausted his remedy under the administrative procedure provided by the Railway Labor Act, since he had not prosecuted his claim to a decision by the National Railroad Adjustment Board. The Supreme Court held that "the legislative history of the Railway Labor Act shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation voluntary in its nature." So the Court held that Moore was not required to seek adjustment of his controversy with the railroad as a prerequisite to suit for wrongful discharge.

An employee may not be required as a matter of law to use the administrative machinery of the Railway Labor Act for the adjustment of his grievances; but, to the extent that the machinery is available and has been established by law, he should find himself able to utilize it in accordance with "immutable principles of justice," and without denial of rights which are a part of due process of law. But if the use of the machinery of the Railway Labor Act is wholly voluntary and an employee is under no legal compulsion (although he is under a legal duty) to follow the procedure provided in the Act, then certainly there can be no invalidity in a contract made in his behalf by an organization of which he is a member, agreeing with the railroad that he can be represented by his own organization in a voluntary negotiation of his claim with railroad officials.

On the other hand, if the legal duty clearly imposed on the employee carries with it some legal compulsion, then the claim of the Engineers that an employee can be compelled to submit his claim to prosecution through a representative not of his own choosing can only be sustained by a flagrant violation of constitutional rights.

Cases Cited By Petitioner

It seems unnecessary to review in detail the citations offered by counsel for petitioner in support of their contentions. The National Labor Relations Board, the Attorney General's Committee, various writers on labor relations, and the judicial opinions cited, provide support only for one proposition, which is not in dispute, which is, that the formal interpretations or other modifications or revisions of a contract are to be regarded as a part of the collective bargaining process.

In the present case, the Firemen have always conceded the right of the Engineers' Brotherhood as the craft's representative to negotiate and enter into a contract determining the wages and working conditions of the craft, and necessarily have conceded the right of the same organization to agree further with the Railroad upon revisions, or supplements, or interpretations which, together with the original contract, eventually represent the craft agreement.

But counsel for petitioner failed to find support anywhere for their present contention that an individual employee can be denied the right to select his own representative for the enforcement of his individual claim arising out of the craft agreement. In their effort to find authoritative support for an insupportable contention, counsel for petitioner proceeded to extraordinary lengths in the misapplication of authorities cited. For example, on page 34 of petitioner's brief, it is stated that enforcement of an order of the National Labor Relations Board was "refused, on different grounds," by the Ninth Circuit Court of Appeals in N.L.R.B. v. North American Aviation, Inc., decided June 24, 1943, now reported in 136 F. (2d) 898. But an examination of the opinion of the court shows that enforcement of the Board's order was denied and the order was set aside on the express ground that the National Labor Relations Act does not grant, but in fact specifically denies any exclusive right to the majority organization to represent an individual employee in the prosecution of his individual grievance.

Then on pages 36-37 of their brief, counsel for petitioner cite the case entitled National Licorice Co. v. National Labor Relations Board, 309 U. S. 350, 364, as authority for their claim that this Court upheld an order of the National Labor Relations Board "directing an employer to cease recognizing a minority represen-

tative as the representative of any of the employees for the purpose of dealing with the employer concerning 'grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.'" (Italics theirs) But, prior to the quoted passage (which is only a recital and not a holding of the Court), this Court had made the following definite statement:

"Here the right asserted by the Board is not one arising upon or derived from the contracts between petitioner and its employees. The Board asserts a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices. " "

So this Court held that the individual employees were not necessary parties, and specifically held, regarding the effect of the Board's order, as follows:

"* * It does not foreclose the employees from taking any action to secure an adjudication upon the contracts, nor prejudge their rights in the event of such adjudication. * * *"

It should be evident from the above citations that it is not necessary to make a further detailed commentary on the alleged supporting authorities whose opinions are so generously misapplied in petitioner's brief.

QUESTIONS PROPOUNDED BY THIS COURT

In the brief for the present respondent as petitioner in No. 41, we have undertaken to discuss the questions which counsel were requested to discuss by the Court. Since the petition in No. 27 and the cross-petition in No. 41 bring to the Court only one case, we will not repeat here our discussion of the questions propounded by the Court.

CONCLUSION

We submit that the judgment of the Circuit Court sustaining the validity of Article 51, Section 1, of the Firemen's agreement should be affirmed.

Respectfully submitted,

DONALD R. RICHBERG. FELIX T. SMITH, FRANCIS R. KIRKHAM. L. F. KUECHLER. Attorneys for Respondent. General Grievance Committee (Firemen).

Note: After this brief was in type, we were served with an addendum to the Government's brief consisting of an "opinion" of the General Counsel for the National Labor Relations Board in which the right to contract for an exclusive representation of employees in grievance cases under the Railway Labor Act is defended on the alleged authority of Atlantic Coast Line R. Co. v. Pope, C.C.A. 4, 119 F. (2d) 39. This decision does not support the General Counsel's argument and he ignores the following decisions which are directly contrary to his argument:

Illinois Cent. R. Co. v. Moore, 112 F. (2d) 959, 965 (cited supra on p. 8).

General Committee etc. v. Southern Pacific Company et al, 132 F. (2d) 194 (the present case).

N.L.R.B. v. North American Aviation, Inc., 136 F.

(2d) 898 (cited *supra* on p. 33).

We submit that the opinions of these courts are entitled to greater consideration than the argument of a lawyer which has been specifically rejected by one of these courts.

In the Supreme Court of the

United States

OCTOBER TERM, 1943-

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company (an unincorporated association),

Petitioner.

14

Southern Pacific Company, a corporation, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (an unincorporated association).

Respondents

General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (an unincorporated association).

Petitioner.

v.s

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southerr Pacific Company (an unincorporated association), and Southern Pacific Company, a corporation,

Respondents.

No. 27

No. 41

Brief for Southern. Pacific Company, Respondent

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In the Supreme Court of the United States

OCTOBER TERM, 1943

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company (an unincorporated association),

Petitioner.

VS.

Southern Pacific Company, a corporation, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (an unincorporated association),

Respondents.

General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (an unincorporated association),

Petitioner.

27

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company. (an unincorporated association), and Southern Pacific Company, a corporation,

Respondents.

NO. 21

No. 41

Brief for Southern Pacific Company, Respondent

OPINION BELOW

The opinion of the Circuit Court of Appeals for the Ninth-Circuit (R. 792-826) is reported in 12 F.(2d) 194.

The trial court (The United States District Court for the Northern District of California) entered special findings of fact and conclusions of law (R. 44-57), but rendered no opinion.

JURISDICTION

The jurisdiction of this Court in this cause has been invoked by the Petitioners under Section 240(a) of the Judicial Code (28 U.S.C. 347).

STATUTES INVOLVED

The statutes principally involved are:

The Railway Labor Act, as amended June 21, 1934 (45 U.S.C. 151-163, inclusive); and

The Declaratory Judgments Act of 1934 (28 U.S.C. 440).

These acts are printed in full in Appendix A to the brief for the petitioner in Number 27; the text of the Railway Labor Act is likewise reproduced as an appendix to the brief for the United States as amicus curiae. To save repetition, a further reprint of the statutes as an appendix to this brief is therefore omitted.

STATEMENT

This brief is presented on behalf of Southern Pacific Company, respondent in numbers 27 and 41, and is directed to the issues raised in both of those dockets, inasmuch as they arise upon a common record and involve the same case in both the district and circuit courts.

Although the facts are reviewed in considerable detail in the briefs for both petitioners (brief of Engineers' Committee in No. 27, pages 2-17; brief of Firemen's Committee in No. 41, pages 2-12), and also in the brief for the United States (at pages 3-8, 12-18), we believe that a short summary is desirable, so that our position in the case may be fully understood.

an employer of railroad labor is subject to the Railway Labor Act. In accordance with that statute it has entered into a collective bargaining agreement with the Engineers' Committee, as the craft representative of the locomotive engineers in its employ, covering the rates of pay and working conditions of such engineers. That agreement, for convenience called the Engineers' Schedule, is in evidence as Exhibit 1 (R. 111, 326-467). A corresponding agreement with the Firemen's Committee, as the craft representative of the locomotive firemen, similarly covers the rates of pay and working conditions of those employees, and is in evidence as Exhibit 2 (R. 111, 468-636).

The crafts of locomotive engineers and firemen employed by Southern Pacific, although treated as distinct for purposes of representation and collective bargaining, are in fact closely related, and have many common interests. All

firemen are potential engineers, and are required by rule to qualify for promotion in their turn, or to forfeit substantially all their acquired seniority. Many are already qualified and are called to service as engineers as vacancies occur. Nearly all engineers are former firemen, and all hold firemen's seniority. As traffic fluctuates in volume, and the need for engine service increases or falls away, men are drawn from the firemen's ranks to the ranks of engineers, or are returned from the ranks of engineers to the ranks of firemen. In times of very light traffic it is possible that all of the firemen in regular service may be qualified as engineers and hold engineers' seniority; as traffic increases all or most of these men will be returned to the engineers' working lists from which they, or some of them, will again revert as traffic recedes. When engineers are demoted to firing service they become senior firemen and displace other firemen, their juniors, who are then left without employment.

The Engineers' Committee, petitioner in No. 27, and plaintiff in the action as originally commenced in the district court, is created by and acts under authority of the Brotherhood of Locomotive Engineers; while the Firemen's Committee, cross-petitioner in No. 41 and the intervening defendant in the district court, acts by authority of the Brotherhood of Locomotive Firemen and Enginemen. These two labor organizations draw their membership from a common source, and are in constant and energetic rivalry with each other. Each brotherhood seeks to preserve and enlarge its membership, and to obtain and hold for itself and its members every advantage possible.

The case at bar constitutes simply one phase of that continuing competitive struggle, for it represents an effort of the Engineers' Committee, as the agency of the Engineer's Brotherhood, to obtain an authoritative interpretation of the Railway Labor Act which will render membership in that brotherhood much more desirable and valuable, if not virtually compulsory, for every engineer employed by Southern Pacific; and will at the same time destroy much if not all of the value which engineers may derive from membership in the Firemen's Brotherhood. The Firemen's Committee, on the other hand, naturally opposes this endeavor of the Engineers' Committee, and seeks instead to preserve existing usages and procedures under the Act and to protect the value of its membership for those of its members who have been or are employed as engineers. It will be borne in mind that many of the engineers employed by Southern Pacific retain membership in the Firemen's Brotherhood; and the record also suggests that at times there may be men working as firemen who are members of the Engineers' Brotherhood.

It should be clearly understood that Southern Pacific, as the employer, does not and cannot have any partisan interest in the membership rivalry of the two brother-hoods. Under Paragraphs Fourth and Fifth of Section 2 of the Act, it is forbidden to question the right of any employee to join the labor organization of his choice or to require any employee as a condition of employment to join or refrain from joining any organization. The Act not only does not permit, but especially condemns any "closed-shop" agreement, being, in that respect, as in

many others, wholly different from the National Labor Relations (Wagner) Act. The carrier's primary interest is in the maintenance of harmonious relations with both organizations and the individual employees which they represent, regardless of the rivalry between them, to the end that there may be no interruption of essential transportation service, through lack of a sufficient number of engine men qualified to perform that service. The paramount-obligation to protect the public service rests not only upon the employees, and the Brotherhoods which represent them.

However, Southern Pacific is not to be regarded as a mere neutral in this case. Though it does not favor either brotherhood as such, it here takes a position opposed to the contentions of the Engineers' Committee: for it believes and maintains that its agreement with the Firemen's Committee is lawful and valid in all respects; that the district court properly so held; and that the circuit court's decision, to the extent that it affirmed the holding of the district court, was correct. While the position taken by the Firemen's Committee is generally the same as our own, it is acting in its own independent right and interest, so far as Southern Pacific is concerned; for it neither controls nor is controlled by the carrier.

THE QUESTIONS PRESENTED

The petition of the Engineers' Committee in No. 27 is addressed to the conclusions set forth by the Circuit Court in Part A of its opinion (R. 792-815; 132 F.(2d) at pages.

195 to 202), and its affirmance of the findings and conclusions of the district court, relating to the right of the Firemen's Committee to represent its individual members, or other individuals, in the presentation, handling and settlement of their individual disputes and grievances arising out of their employment as locomotive engineers of Southern Pacific.

Although the Engineers' Committee has preferred to divide the question thus presented (its brief, pp. 20-21), it can really be summarized as a single question, as follows:

Does the Railway Labor Act, or the Engineers' Agreement, prohibit the Firemen's Committee and the employer from incorporating in the Firemen's Schedule a provision that the Firemen's Committee may represent an engineer belonging to the Firemen's Brotherhood, or any other individual who may desire the Firemen's Committee to act as his representative, in presenting, adjusting, and handling to a conclusion, a personal dispute with the employer arising out of a grievance or out of the interpretation or application of the working agreement applying to his employment as an engineer, or prohibit the Firemen's Committee from undertaking such representation?

The petition of the Firemen's Committee in No. 41 is addressed to the conclusions arrived at by the Circuit Court in Part B of its opinion (R. 816-826), and particularly its holdings (1) that the mileage provisions contained in Article 43 of the Firemen's Schedule (R. 604-608) do not prescribe rules for the restoration of demoted •

men to the ranks of engineers, as a condition of the exercise by such demoted engineers of the privilege of becoming and remaining firemen, and thereby displacing junior firemen from their jobs; and (2) that the provisions relating to the calling of firemen for service as emergency engineers (R. 587) are invalid in so far as they "relate to the entry of a fireman into the craft of engineers" (R. 826).

As in No. 27, the essential issues presented in No. 41 can be expressed in a single question, as follows:

Does the inclusion, within and as a part of the Firemen's Schedule, of rules setting forth conditions as to employment and opportunity for employment as engineers, which must exist and be complied with, in order that the individual members of the engineers' craft may revert to or continue in firing service when unable to work as engineers, and in consequence displace junior firemen, violate the Railway Labor Act, or infringe any right of the Engineers' Committee as the craft representative of the engineers' craft?

As already noted, the district court in its findings and conclusions answered both of the above questions in the negative (see Findings 8, 10, 11, 13, 14; Conclusions 2, 3, 4, 5; R. 50-53, 55-57). While the Circuit Court clearly answered the first in the negative, and appeared to make the same answer to the second, it so qualified the latter answer as to leave its precise conclusion in doubt; and moreover, it modified (R. 826) the conclusion of the trial court as to the validity of the provisions relating to the calling of firemen for service as emergency engineers. It

is our position that the district court was correct, and that in qualifying and modifying its judgment and decree to the extent indicated, the Circuit Court erred.

In addition to the primary questions presented by the petitioners, there are also certain questions which this Court has requested the parties to discuss, as follows:

- (1) Whether resort to the declaratory judgment procedure is appropriate in the circumstances;
- (2) Whether any questions of the construction of the contracts involved are governed by state or federal law; and
- (3) What bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought.

SUMMARY OF ARGUMENT

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THE REPRESENTATION ISSUE (No. 27).

Two classes of disputes between an employer (carrier) and its employees are recognized in the Railway Labor Act: (1) those relating to wages and working conditions for a craft or class of the employees generally, and (2) those which arise out of the interpretation or application of agreement provisions to the service of a particular employee, or group of employees. The latter are generally termed "grievances".

While the craft representative has the exclusive right to handle with the employer all disputes of the first class, an individual employee involved in a dispute of the second class may be represented by any person or organization of his choice, including an organization other than the craft representative, in having his grievance handled to a conclusion. Such right of individual representation in grievance cases does not infringe the rights of the traft representative, nor imperil any of the established rights of the craft itself. Such right was in effect recognized by this Court in Virginian Railway Co. v. System Federation, 300 U.S. 515, and has also been consistently recognized by tribunals functioning under the Act.

The petitioner's contention, if sustained, would impose virtually a "closed shop" upon engineers employed by the carrier: a condition which the Act prohibits. In that respect, as in others, the Act is quite distinct from the National Labor Relations Act. The latter statute has

no application in the premises; and decisions interpreting or applying its provisions, such as cited by petitioner, are of little or no value as authorities herein.

II.

THE ISSUES RELATING TO THE MILEAGE LIMITATION AND DISPLACEMENT PROVISIONS OF THE FIREMEN'S SCHED-ULE (No. 41).

Article 43, Sections 1, 2, 3, 4, and 6 of the Firemen's Schedule, create a privilege whereby "demoted" engineers may return to firing service and displace firemen from their jobs; these provisions also attach certain conditions to the exercise of that privilege.

The Firemen's/Committee concededly has the sole right to agree with the carrier as to the conditions under which demoted engineers may become and remain firemen. One such condition is that demoted men shall not continue as firemen, but will be restored to service as engineers, in seniority order, whenever it is shown that they can earnreasonable "mileage" as engineers, and their addition to the engineers' working lists will not reduce the "mileage" of the other engineers below reasonable levels. This condition operates to control the reemployment of demoted men as engineers, but such control is not against the will or without the concurrence of the engineers as a group. While engineers could avoid such "control" by abandoning the displacement privilege, they do, not wish to, because the privilege is very valuable to both the craft and the individual engineers.

The Circuit Court erred in indicating that such "control" is improper or unlawful as a condition annexed by the firemen, with the carrier's concurrence, to the exercise of the displacement privilege.

The Circuit Court likewise erred in modifying the trial court's decree with respect to the validity of the questions and answers under Article 37, Section 15, of the Firemen's Schedule. The latter provisions are simply a protection of the seniority rights and guaranteed earnings of demoted engineers, who, while holding regular jobs as firemen, are called for temporary emergency service as engineers, and are reasonably necessary for that purpose. They do not interfere with the "control" by the Engineers' Committee of the working conditions of such men while serving as engineers.

III.

REQUESTED DISCUSSION

- (a) The declaratory judgment procedure was properly resorted to, there being an actual controversy between the parties over the interpretation and validity of certain statutory and contractual provisions, and no reason of comity, or otherwise, for the discretionary denial of declaratory relief. No administrative tribunal exists under the Railway Labor Act to which prior resort should have been had.
- (b) The question of the construction of the contracts involved should be decided under Federal, rather than state law; there having been a Federal occupancy of the field of such interpretation, by reason of the Railway

Labor Act. Furthermore, since the contracts are intended to be performed in several states, uniformity of construction on the basis of Federal law is essential.

(c) No injunctive relief being demanded, the Norris-LaGuardia Act has no application. Moreover, since the suit is in essence for the protection of the petitioner's claimed exclusive right of craft representation, said Act would not bar injunctive relief if the right thereto were otherwise established.

ARGUMENT

I.

THE REPRESENTATION ISSUE (No. 27).

(a) Contentions of the Engineers' Committee Summarized.

The argument of the Engineers' Committee, petitioner in No. 27, upon the primary issues presented in that proceeding, is framed in the form of a challenge to the holding of the Circuit Court (R. 815) sustaining the findings and conclusions of the District Court (Findings 7, 8; Conclusions 2, 5(c); R. 48-50, 56-57) which in substance declare that the Firemen's Brotherhood has the right to represent its engineer members, and any other individual engineers who may desire such representation, in handling to a conclusion their individual claims and grievances arising out of their employment as engineers of Southern Pacific; that the right of the Engineers' Committee to represent the craft or class of engineers employed by Southern Pacific is not thereby infringed: and that Article 51, Paragraph 1, of the Firemen's Schedule (R. 616) is therefore not unlawful in expressly stating that an engineer, in common with certain other classes of employes, may have his own organization represent him in handling his grievances.

Petitioner's argument, though somewhat extended by references to and quotations from various other discussions, many of which are of doubtful authority and have but little relation to the point, is capable of being condensed into one paragraph, as follows:

"The Engineers' Committee is the representative of the craft of locomotive engineers in the carrier's

employ, having been duly selected by a majority of the craft. In that capacity, it has the exclusive right, under the Railway Labor Act, to represent the craft in all dealings with the employer relating to existing or proposed rates of pay, rules or working conditions of the engineers' craft as a whole. Further, because it is the exclusive craft representative, it also has the sole right to represent individual engineers in presenting to the employer the individual disputes or grievances of such rengineers arising out of their engineer employment, if the interpretation or the application of the Engineers' Schedule is involved in the dispute; and has the further exclusive right to handle such disputes or grievances to a conclusion under the procedures provided by the Act, including presentation to the National Railroad Adjustment Board, if direct settlement with the employer cannot be effected. This claimed exclusive right is infringed if any other representative is permitted to appear for individual engineers in the handling of such disputes or grievances with the employer, or otherwise pursuant to the Act, because the integrity of the Schedule itself is thereby threatened. It is not contended that an individual engineer may not present his own grievance, or that he may not act through a representative other than the Engineers' Committee, if he pursues his remedy through avenues other than those provided by the Act; but if he is to be represented in any procedure or handling under the Act, only the Engineers' Committee may be his representative."

(b) Two Distinct Classes of Disputes Between Employer and Employees Are Recognized by the Railway Labor Act.

A proper understanding of the essentials of the representation issue will be made easier if it is first made clear that two distinct classes of disputes between an employer and its employees are recognized in the Act.

Disputes of the *first* class arise when rules or wages affecting an entire craft are proposed to be established or modified, and the employer and employee representatives fail to agree. Such disputes are subject to negotiation and handling, in so far as the employees are concerned, exclusively by the duly chosen representative of the craft involved.

A dispute of the second class arises when an individual employee, who has performed, or claims the right to have performed, service as a member of a craft under a particular craft agreement, presents to the employing carrier a request that the latter comply with some rule of the agreement claimed by the employee to be applicable in the premises. Generally the request is for payment of additional wages asserted to be due for the service performed, or which should have been performed according to the employee; occasionally some other claim under the agreement is made. The carrier's refusal to comply creates the dispute.

No issue arises in this case as to petitioner's exclusive right, as the representative selected by the majority of the engineers in the carrier's employ, to represent the craft ("all engineers") in disputes of the first class. The question at issue is whether petitioner also has the sole right to represent an individual engineer, to the exclusion of the Firemen's Committee, when an individual dispute or grievance of the second class is handled under the Act.

The gist of petitioner's argument is simply that there is no essential difference between the two classes of disputes; that when an individual claim arises under an agreement and is in dispute, so that the interpretation and application of the agreement become necessary, the ruling becomes a precedent affecting and even apparently modifying the agreement; that the handling of such claims by a representative other than the chosen craft representative tends to and does break down the agreement, to the prejudice of the craft representative and the craft as an entirety. Hence, so politioner argues, since under the Act the carrier cannot lawfully recognize any representative except the Engineers' Committee in the handling of disputes of the first class, where the engineers' craft is involved, it is equally forbidden to do so when the dispute is of the second class, and an individual serving as an engineer is involved.

(c) The Act Provides Separate Methods and Machinery for the Handling of the Two Classes of Disputes.

Petitioner's position is not sustained either by reason or authority, or on the face of the Act itself.

The Act provides wholly separate methods and machinery for the handling and settling of the two classes of disputes. Those of the first class, involving changes in craft agreements, must be initiated by a proposal from one party to the other (Railway Labor Act, Sec. 6), followed by conference (Sec. 2: Second). If the parties do not agree in conference, the services of the National Mediation Board may be invoked by either (Sec. 5: First), or volunteered by the Board, in an effort to

bring about agreement. If mediation fails, the parties must be requested by the Mediation Board to agree to arbitrate (Sec. 5). If they agree, arbitration proceeds under Sections 5 (Third), 7 and 8, culminating in an arbitration award (Sec. 9). If they do not agree to arbitrate, the change in the agreement, if proposed by the employer, may be made effective not less than 30 days after the Mediation Board has withdrawn from the dispute (Secs. 5, First(b); 6). If the changes are proposed by the employees' representative, the latter are then free to assert their "economic strength" (i.e., to strike or threaten to strike) to compel the employer to agree; they may also use the same weapon to resist proposed changes by the employer. Even at this stage, there is a further and final means of promoting peaceful settlement. If the threat of. strike appears likely to interrupt essential transportation service, the President may, under Section 10, appoint an Emergency Board to investigate the dispute, and report its findings of fact and recommendations thereon to him within 30 days. During that period, and for a further like period of 30 days following the report, neither party may change any of the conditions out of which the disputearose: i.e., the employer may not make effective any proposed changes in the agreement, while the employees may not carry out their threat of strike.

Disputes of the second class are, as above stated, invariably predicated upon a claim by an employee who feels that he has not been paid as provided by the craft agreement, or that he has otherwise been unjustly treated, and are customarily termed "grievances." These disputes must first be handled "in the usual manner" (Sec. 2, Sixth;

3(i)). The "usual manner of handling" is fully described in the testimony (R. 140-141, 150-151, 205-208, 240) and the findings (Finding No. 7. R. 48-50); that is, the emplovee normally presents his claim to his immediate superior; when it is rejected, he then selects the chairman of his local lodge ("his own organization"), who handles the matter further with the local officials of the carrier: and when the latter again disallow the claim it is appealed 4 to the general chairman of the claimant's brotherhood. who will then handle it again with the carrier's general manager, or his representative, at the carrier's general headquarters. The duty of employee and management representatives to confer upon these disputes is expressly declared in Section 2, Sixth; and it will be noted that in that paragraph, as elsewhere in the Act, they are placed in a wholly different class from the disputes over proposals to change rules, wages or working conditions (i.e., of the first class), as to which the duty of conference is specifically declared in Section 6 of the Act.

If a dispute of the second class is not settled through such handling "in the usual manner," then under Section 3(i) of the Act it may be referred to the National Railroad Adjustment Board, which has jurisdiction to make an award (Sec. 3(n)). This award becomes binding upon the parties, except in so far as it calls for the payment of money (Sec. 3(n)), being in that event enforceable by suit (Sec. 3(p)). It should be noted that the National Railroad Adjustment Board is wholly distinct from the National Mediation Board. The Adjustment Board has actual power to hear cases and make awards in disputes of the second class, but has nothing to do with disputes

of the first class. The Mediation Board has no power to make awards in any class of disputes between employers and employees; its intervention as a mediatory body is restricted to those disputes which either involve changes in working agreements (i.e., of the first class), or are otherwise not referable to the Adjustment Board.

These different methods of procedure are thus a recognition, in the very framework of the Act, of the essential differences between disputes of the first class, over rules establishing or modifying working conditions, which may and usually does involve and interest the craft as a whole, and those of the second class, which grow out of grievances or out of the interpretation or application of agreement rules, and therefore involve and interest only the individual employees who present the claims. This distinction was well stated in an address delivered on November 12, 1936, before the Academy of Political Science, by Dean Lloyd K. Garrison of the Law School of the University of Wisconsin, dealing with the subject "Labor Relations in the Railroad Industry." Dean Garrison has served many times as a referee for the First and Third Divisions of the National Railroad Adjustment Board, pursuant to appointment by the Mediation Board in accordance with the provisions of Section 3(1) of the Act. In this capacity his experience compares with that of Dean William H. Spencer of the University of Chicago Business School, whose publication, "The National Railroad Adjustment Board," is referred to as an authority and relied upon in petitioner's brief (at p. 42). In Dean Garrison's address, he said in part:

"The Mediation Board has been active in . . . disoutes growing out of a desired change in wages or working conditions. . . . The Board is performing a useful function with great ability and success. When it fails in mediation, as of course it often does, the law provides a method of voluntary arbitration. If the parties cannot be induced to arbitrate, the matter is dropped unless a serious interruption of commerce is threatened, in which event the President may appoint an emergency board to investigate and report. During its investigation and for 30 days after its report the status quo must be maintained. After that nature may take its course. These provisions for mediation, arbitration and investigation, particularly the first two, are based upon a long experience and a long legislative history. They are sound and have proved their worth.

"They relate, however, only to conflicts which are not justiciable in nature-demands for an increase or reduction of wages; changes in rule and so on. These conflicts generally end in compromise. But there are other conflicts which are justiciable in nature-disputes about the meaning of particular clauses in written agreements. These disputes call for judicial interpretation and decisions not conciliation and compromise. Now experience has shown that you cannot successfully combine judicial and mediatory functions in one body. We tried it with the United States Railroad Labor Board, set up after the war, and the result was a memorable failure. Congress, therefore, in creating the new Mediation Board, gave it no judicial functions. These were assigned to another new agency, the National Railroad Adjustment Board.

"The Adjustment Board interprets and applies written contracts between carriers and unions, hand-

ing down decisions which are reviewable and enforceable in the federal courts."

(d) The Act, Though Requiring Recognition of the Chosen Craft Representative on Matters Pertaining to the Craft as a Whole, Permits an Employer to Meet the Employees Individually on Matters of Individual Concern.

Petitioner bases its argument particularly upon paragraphs Third and Fourth of Section 2 of the Act, and especially upon the second sentence of paragraph Fourth, reading as follows:

"The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act.".

To sustain its position in this language, which relates only to the representative of the craft, prohibits the representation of any individual in that craft by any other representative, petitioner cites (its brief, pp. 7, 22, 27) the decision of the Supreme Court in Virginian Railway Company v: System Federation (1937), 300 U.S. 515, and relies in particular upon a portion of one sentence of that opinion (300 U.S., at p. 548), declaring that the Act

"imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other."

Petitioner dismisses, however, as without significance, certain of the most important language of the opinion, which we quote below.

The case involved the review by this Court of a decree rendered by a district court, in which the railway company, as the employer, had been forbidden to undertake any negotiations or enter into any contract concerning rules, rates of pay, or working conditions for its shop-department employees, except with the labor organization selected by the majority of those employees as their craft representative. The decree had been rendered pursuant to Section 2 of the Act, so that the decision involved the interpretation of the language of that section.

This Court declared that the Act imposed upon the employer the affirmative duty to negotiate with respect to rules, rates of pay, and working conditions affecting the craft, with the representative chosen by the majority of the craft, and hence the negative duty to negotiate with no other representative; but the Court also said (300 U.S., at pp. 548-549):

"We think, as the Government concedes in its brief. that the injunction against petitioner's entering into. any contract concerning rules, rates of pay and working conditions, except with respondent, is designed only to prevent collective bargaining with anyone purporting to represent employes, other than respondent, who has been ascertained to be their true representative. When read in its context it must be taken to prohibit the negotiation of labor contracts; generally applicable to employees in the mechanical department, with any representative other than respondent, but not as precluding such individual contracts as petitioner may elect to make directly with individual employees.1 The decree, thus construed. conforms, in both its affirmative and negative aspects, to the requirements of Section 2."

^{1.} All emphasis in this and other quotations has been supplied by the authors hereof, except as noted.

Furthermore, in considering the validity of Section 2 of the Act, under the Fifth Amendment, the Court said (at p. 557):

"The provisions of the Railway Labor Act applied in this case, as construed by the Court below, and as we construe them, do not require petitioner (the employer) to enter into any agreement with its employes, and they do not prohibit its entering into such contract of employment as it chooses, with its individual employes. They prohibit only . . . use of the company union . . ."

Again the Court said (at p. 559):

"The provisions of the Railway-Labor Act invoked here neither compel the employer to enter into any agreement, nor preclude it from entering into any contract with individual employes."

In other words, as this Court plainly recognized, there is no inconsistency between the exclusive right of the petitioner to represent the entire craft of engineers employed by the carrier, for purposes of collective bargaining respecting matters affecting the entire craft as such, and the right of individual engineers to enter into individual agreements with the carrier, and for that purpose to meet with the carrier either directly, as individuals, or through a representative of their own choosing, so long as there is no attempt to make a collective bargaining agreement with such individuals which will affect the working conditions of the craft as a whole.

The entire argument of the Engineers' Committee is predicated upon the erroneous premise, stated in the very

first sentence of its discussion (its brief, p. 22) and thereafter restated several times in subsequent passages, that the inclusion of the word "engineer" in the challenged paragraph of the Firemen's Schedule is equivalent to an agreement between the carrier and "a minority Brotherhood" with respect to the "craft or class of engineers."

The initial error lies in the assertion that the Firemen's Committee, in this instance, is "a minority representative." It may be true that the Firemen's Brotherhood does not include in its membership more than a minority of the engineers employed by the carrier; but that fact is immaterial. The Firemen's Committee has not entered into the agreement as a representative of that minority, considered as a group. So far as concerns its engineer members, the Firemen's Committee appears only as the representative of each of those several individuals; and the agreement provision challenged by the Engineer's Committee is, in legal effect, simply an agreement between the carrier and each such individual engineer.

The second error in this initial premise lies in petistioner's assertion that the agreement with the Firemen's Committee is with respect to the "craft or class of engineers." The agreement, so far as concerns the individual engineers with whom it is made, relates only to their several individual controveries with the management. The craft of engineers as a whole is not involved, for the disputed clause not only does not attempt to provide for craft representation (of the engineers), but on the contrary affirmatively declares that the handling of individual claims ("grievances") shall be under the recognized interpretation of the Committee making the schedule (in the case at bar, the Engineers' Committee).

The petitioner argues at length that the handling and settlement of disputes arising under the Engineers' Schedule is part and parcel of the process of collective bargaining, in that such settlements become interpretations of the contract, and thus attain standing as precedents for the disposition of subsequent grievances. This is true only when the settlements are between the parties to the contract: i.e., between the Engineers' Committee and the carrier. But it is emphatically not true when an engineer's grievance is made the subject of a settlement between the Firemen's Committee, as representative of the individual engineer claimant, and the carrier; nor would it be true if the settlement were made with any other representative not a party to the Schedule. In such case the settlement could not constitute an interpretation of the agreement, or become a precedent binding upon the craft representative, or otherwise have any effect except to dispose of the dispute as between the two parties immediately concerned: the individual claimant and the employer. Even a compromise on the basis of partial satisfaction of the entire claim (Cf. Ex. 11, R. 311, which petitioner appears to consider a "horrible example") is no more than a private agreement, which obviously does not affect the craft or its contract, nor otherwise infringe any prerogative of the craft representative. Such settlements are, in fact, outstanding examples of those "contracts with individual employes? which this. Court, in the Virginian case, stated were not precluded by the provisions of the Railway Labor Act (300 U.S., at pp. 557, 559).

It is clear that neither the craft agreement itself, nor the rights of the Engineers' Committee, as the craft representative, are infringed when the Firemen's Committee represents an engineer in handling his individual grievance to a conclusion before the National Railroad Adjustment Board. The Act itself (Sec. 3 (j)) provides for individual representation; furthermore, the Engineers' Brotherhood has its own representative on the First Division, which has jurisdiction over all engineer cases, so that the Engineers' Committee has full opportunity to be represented in every such case, even though it does not actually present the case to the Board.

The same essential question here discussed was also presented in Case No. 1, before the Emergency Board appointed by the President on April 14, 1937, under Section 10 of the Act, for the purpose of considering various disputes which had led to a threatened strike of the members of two important crafts of the carrier's transportation emilloyees. The report of that Emergency Board, as rendered to the President, was printed as a public document. It is reproduced in full in the record as Exhibit A (R. 726-779). Although petitioner at the trial affected to regard this report as incompetent ("res inter alios acta"). and therefore inadmissible as evidence against any party to the case (compare its counsel's remarks, R. 188), it cannot and apparently does not deny that it is both material and relevant. Certainly, as an expression of views rendered by a body legally created and convened pursuant to the applicable statute, the report is entitled to at least as much respect and authoritative weight as, for example, statements in opinions of the Second and Third Divisions, of the National Railroad Adjustment. Board, which petitioner relies upon (Brief, p. 41); or expressions found in reports of the Atforney General's Committee on Administrative Procedure (Brief, p. 32); or in memoranda submitted to that Committee by the Railway Labor Executives Association, in connection with matters quite foreign to the present controversy (Brief, pp. 41-43); and to far greater weight than statements by authors such as Rosenfarb (cited on pp. 36, 48 of petitioner's Brief), or Lorwin & Wubnig (cited on p. 48). Indeed, the discussions by the authors last referred to related to the National. Labor Relations Act and various developments connected with it, and were not addressed to the Railway Labor Act.

It is at least very questionable whether petitioner's objection to the Emergency Board report is well taken. The proceedings before that Board, particularly in Case No. 1, involved exactly the same parties and essentially the same major representation issue as the present suit. Petitioner appeared before that Board voluntarily and demanded to be heard, although it was not originally a party to the controversy, and had not threatened to cause its members to join in the strike against the carrier. Its appearance was allowed because of its insistence that it was vitally interested. It was represented before the Emergency Board by the same officers (Messrs. Laughlin and Peterson) who testified in the present case, and by one of the same counsel (Mr. Weisell) (R. 727). It made a voluminous

showing before the Board, and otherwise took an active part in the proceedings. Perhaps it is true that the Board's findings and recommendations are not binding upon petitioner; but it will not be denied that they were respected and complied with by petitioner, as well as by the other parties before the Board; and it must be admitted that they were rendered only after petitioner had requested and received full opportunity to be heard.

The particular question involved in Case No. 1 before the Emergency Board arose out of objections made by the Firemen's Committee to an agreement entered into between the carrier, as the employer, and petitioner as the representative of the engineers' craft, which provided in substance that whenever claims of individuals were presented under the rules of the Engineers' Agreement, by any organization or representative other than the Engineers' Committee, the claim or dispute must first be referred to the latter for its interpretation of the rule involved. It was claimed by the Firemen's Committee that this agreement seriously abridged its right to represent its engineer members in the handling of their individual grievances, and was therefore unlawful. When the carrier refused to abrogate the challenged agreement with the Engineers' Committee, the Firemen's Committee took the issue to its membership, and obtained authority to call a strike of the firemen in the carrier's employ. The appointment of the Emergency Board, and the presentation of the matters before that Board as a fact-finding body, followed in accordance with Section 10 of the Act. The definite issue was thus presented before that Board whether, on the one hand, the representation rule (Art.

51, Sec. 1) of the Firemen's Agreement, now challenged here by petitioner, was lawful and binding, or whether, on the other, an abridgment of the rights preserved by that rule could be sustained.

The Emergency Board concluded that the representation rule was not unlawful, but that the attempted abridgment violated the Act, and should be cancelled. The following portion of the Emergency Board's Report is particularly in point (R. 736-737):

"The agreement of February 27, 1936, between the Carrier and the Brotherhood of Locomotive Engineers, as interpreted and followed by the contracting parties, modifies and impairs the right of representation theretofore secured to the Brotherhood of Locomotive Firemen and Enginemen through its contract with the carrier.

"It also offends the objects and principles of the Railway Labor Act and infringes upon the rights intended to be secured by that act. This legislation was enacted for the purpose of protecting national transportation against the consequences of labor disputes . between carriers and their employees. It was devised by representatives of management, the employees, and the public. It secured the benefits of unhampered collective bargaining to the several crafts or classes engaged in the work of railway transportation. When a craft or class, through representatives chosen by a majority, negotiates a contract with a carrier, all members of the craft or class share in the rights secured by the contract, regardless of their affiliations with any organization of employees. It is clearly provided that these rights may be protected by negotiation or by the several methods of adjustment established by the Act. It is true that the representatives of the majority represent the whole craft or class in the making of an agreement for the benefit of all, but it is equally true that nothing in the Act denies the right to any employee, or group of employees, to enforce, through representatives of his or their own choosing, his or their rights under any such agreement. The whole spirit and intention of the Act is contrary to the use of any goercion or influence against the exercise of any individual's liberty in his choice of representatives in protecting his individual rights secured by law or contract."

(e) The Petitioner's Contentions, if Sustained, Would Create "Closed-Shop" Conditions, Which the Act Condemns.

Finding, 8, of the District Court (R. 50) states that the petitioner and the Firemen's Committee have been and now are in competition for members, and that if the petitioner's contentions were sustained, so that engineer members of the Firemen's Brotherhood were required to accept the representation of the petitioner in the presentation and handling of their individual claims and grievances pursuant to the Act, that fact would discourage membership in the Firemen's Brotherhood, and encourage membership in the Engineers' Brotherhood. While the petitioner originally challenged this finding in its brief and argument before the Circuit Court of Appeals (R. 781-787), asserting that the evidence was insufficient to support the finding, apparently it does not now consider it of sufficient importance to require separate mention. In any event, the finding is squarely in conformity with the statements made by the Emergency Board, in the text

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of its report (Exhibit Λ), and likewise fully warranted by the evidence generally showing the rivalry of the two organizations.

Indeed, we think that the finding merely states a very obvious conclusion which cannot be avoided. If an individual engineer member of the Firemen's Brotherhood is to be denied the right to select the committee of his own organization as his representative for the handling of his individual claims and grievances, in the manner heretofore consistently followed for many years, his membership in the Firemen's Brotherhood will become of very little value to him. If he is also compelled, as petitioner contends, to select the Engineer's Committee as his representative in order to obtain representation and handling of his grievance in accordance with the Act, he will be virtually forced to join the Engineers' Brotherhood. In that evert, no engineer could afford to remain in the Firemen's Brotherhood, or stay out of the Engineers' Brotherhood; for the petitioner could, and in such circumstances conceivably would refuse to handle any grievance except those of its own contributing members. Engineers not members of the petitioner would have no individual representation, even before the National Railroad Adjustment Board, according to petitioner's contention (petitioner's brief, p. 31).

The intended and necessary result, therefore, of petitioner's contentions is to impose the equivalent of a "closed shop" upon engineers in the carrier's employ, and thus to create a condition expressly condemned by Section 2, Fifth, of the Act. As already stated, that paragraph forbids any contract or agreement whereby a

person seeking employment binds himself to join or not to join a labor organization; and any contracts of that character are declared not to be binding. Section 2, Fourth, likewise forbids an employer to influence or coerce employees in an effort to induce them to join or not to join any labor organization. It may be added, in passing, that the National Labor Relations Act, unlike the Railway Labor Act, sanctions and even encourages closed shop contracts: See Section 8, par. 3; 29 U.S. Code 158 (3).

The Emergency Board of 1937 pointed out (Ex. A, R. 737-738) that any limitation which would substantially handicap the power of the Firemen's Brotherhood to protect the rights of its engineer members promptly and adequately would make membership in the Engineers' Brotherhood more desirable, and thus present to the latter an opportunity to increase its membership at the expense of the firemen's organization. There can be no effective denial that this is the purpose and intent of the petitioner in this litigation. We repeat that any such result falls within the condemnation of the "closed shop", expressly declared in the provisions of Section 2 of the Act above cited.

(f) By Requiring the "Usual Manner of Handling" as a Prerequisite to the Reference of a Dispute to the Adjustment Board, the Act Has Sanctioned Individual Representation in Individual Disputes.

A further conclusive argument, which wholly disposes of petitioner's contentions, rests in the fact that the Act not only recognizes the two distinct classes of disputes,

and provides different avenues for their handling and settlement; it also specifically declares the manner in which the employees shall be represented. When the dispute is of the first class, involving the broad interest of the entire craft, the exclusive representative of the craft is, of course, the representative chosen by the majority (Sec. 2, Fourth). But it will be noted that this representative is, as expressly stated in the second sentence of paragraph Fourth, "of the craft or class"; not of each of the individual employees who belong to the craft. The Virginian Railway decision clearly establishes that the principle of exclusive craft representation for purposes of handling disputes involving the craft does not prevent individual agreements with individual employees; and by the same token it does not prevent individual disagreements, for these of necessity must precede agreements.

The Act goes further, however, in dealing with these individual disputes (of the second class), which "grow out of grievances or out of the interpretation or application of agreements" to individual claims. As to these, the Act says (Sec. 3 (i)) that they "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes"; after which they may be referred by petition to the appropriate division of the Adjustment Board.

The "usual manner of handling" prior to, and at, and ever since the date of the Act is fully developed in the record, there being no conflict between the witnesses who discussed this topic. Finding 7 (R. 49-50) accurately summarizes this testimony, and though this finding is chal-

lenged by petitioner (Brief, pp. 40-48), no attempt is made to show wherein the finding does not correctly reflect the record, or that the supporting evidence is incompetent or inadequate. The finding may therefore be accepted as true and correct.

For the purposes of this case, the outstanding feature of the "usual manner of handling", thus required by statute, is the freedom of the individual claimant to choose his own organization to represent him in handling his claim with his employer. No witness asserted that this was not part and parcel of the "usual manner". Petitioner's leading witness and general chairman, Mr. P. O. Peterson, stated on his direct examination (R. 140-141) that an individual engineer might handle his claim with the superintendent as an individual; "or he may turn his claim over to his organization, the local chairman". We emphasize that the witness did not say that the claim must be turned over to the Engineers' Committee, as the majority representative; it might, as the witness said, be turned over by the individual to his own organization.

^{2.} If petitioner's argument were sound, it would be unable to present to the carrier or to handle with the Adjustment Board the individual grievance of one of its own members, arising out of service as a fireman: i.e., while cut off the engineers' working list and demoted to the firemen's craft. Nevertheless, the petitioner has handled a number of such cases, not only with the carrier, but to the First Division of the Adjustment Board, some of which were presented prior and others subsequent to the date (Oct. 12, 1939) of filing the complaint in the present case. We cite in particular: Docket No. 1850, Award No. 905, in which the petitioner's statement of the claim to the Adjustment Board read in part as follows: "Claim of Fireman F. A. Thompson... for 100 miles held for service... under provisions of ... Article 23, Section 6, Firemen's Agreement"; Docket No. 1851 (covered by Award No. 1079), dated April 30, 1936, in which the petitioner's statement of the claim was in part as follows:

This testimony was strongly confirmed by Mr. C. M. Buckley, who, though appearing as the carrier's witness, had had many years of prior experience as a local chairman, first of the Firemen's Brotherhood, and later of the Engineers' Brotherhood, on the carrier's Los Angeles Division (R. 150). It was likewise confirmed by the testimony of Mr. D. B. Robertson, President of the Firemen's Brotherhood (R. 205-206), whose qualifications to testify as to the Fusual manner' which has prevailed for many years were not and could not be questioned.

The statute not only recognizes handling "in the usual manner", by requiring it as a prerequisite to the reference of a dispute of the second class to the Adjustment Board, and thus preserves the right of individual selection of the representative in these preliminary stages; it continues to preserve that right when the claim has reached the Board. When such a claim is presented to the Adjustment Board, it is not, as petitioner appears to argue, a craft dispute. The statute specifies (Sec. 3 (i)) that such disputes are "between an employee or.

[&]quot;Claim of demoted engineer (fireman) for difference between what he earned as engineer, and what he would have earned on firing assignment same date"; and the following dockets, submitted by the petitioner at various dates, commencing on September 17, 1940 and continuing through each of the interveiting years to and including June 8, 1943: Nos. 11127, 11172, 11277, 12020, 12686, 12701, 12531, 12532, 13213, 13219, 13218, 13225, 13223, 13414, 16210, 16410, 17049, 16765, 16991, 17073.

In each of these dockets, with two exceptions, the claim is on behalf of one or more individuals who served as firemen, and is expressly predicated upon one or more provisions of the Kiremen's Agreement. The two exceptions both relate to engineers serving as firemen, but are predicated, in one instance, upon a rule promulgated by the employer, and in the other, upon a prior award of the First Division. All of this second group of eases are now pending and awaiting final disposition by the First Division.

group of employees and a carrier or carriers"? i.e., between an individual employee and his employer, as well as between a number of employees, and one or more employers. The section conspicuously omits any reference to the craft or class of employees as a possible party to such a dispute. The right of the individual or group of individuals interested in such a dispute to select his or their own representative in handling the case before the Adjustment Board is preserved by Section 3 (i), which states:

"Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect

Petitioner quotes at length from the Memorandum submitted by the Railway Labor Executives' Association to the Attorney General's Committee on Administrative Procedure (pp. 41-43 of its brief), and has attached the entire Memorandum as Appendix B to its brief, apparently for the purpose of supporting the contention that the only proper "party" to a dispute before the Adjustment Board, so far as the employees' interest is concerned, is the craft representative chosen by the majority. Petitioner would thus appear to argue that an individual employee may not take his own case to the Adjustment Board. This argument is fully disposed of by the decision of the Circuit Court of Appeals for the Fifth Circuit, in

Illinois Central R. Co. v. Moore (1940), 112 F.(2d) 959,

in which that court said (pp. 963, 965-966):

- Section 3, 45 U.S.C.A. 153, provides jurisdiction in the Railroad Adjustment Board for all manner of disputes, the First Division being expressly given jurisdiction over those involving yard-service employees. Subsection (i) makes it plain that not only disputes raised by the Union but also those of a single employee are included; saying: 'The disputes between an employee or group of employees and a carrier . . . growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21. 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier'. and then may be referred to the Adjustment Board." (pp. 963-964).
- ". . . . The Adjustment Board may settle the disputes of the individual employee as well as those of a group, 45 U.S.C.A. 153 (i):" (p. 965).
- ". . . In case of an arbitrary discharge the union might take the matter to the management, the Adjustment Board, or even to the test of a strike. The individual also on his individual contract of employment may seek reinstatement with pay through the railroad's officers, or through the Adjustment Board; . . . " (p. 966). (Emphasis as in the original.)

While the decision of the Circuit Court of Appeals was reversed on other grounds (Moore v. Illinois Central R. Co. (1941), 312 U.S. 630, it was approved by this Court upon the point discussed in the quoted excerpts (312 U.S., at pp. 635, 636).

(g) Petitioner's Counsel and its Witnesses Are Inconsistent in Their Statements of Petitioner's Position.

Petitioner's argument, and indeed its basic contention (set forth at p. 31 of its brief) that an individual engineer may not pursue his remedy before the Adjustment Board by a representative of his own choosing, such as the Firemen's Brotherhood, stands in strange contrast with the views declared by Mr. G. W. Laughlin, First Assistant Grand Chief Engineer of the Engineers' Brotherhood, who was called as petitioner's closing witness. Mr. Laughlin stated, in substance, that when an individual engineer has a dispute arising under the Engineers' Schedule, which cannot be settled with the management, that individual "can take a case to the (Adjustment). Board under the law, or he can select anyone he desires to take it to the Board" (R. 288); before the Adjustment Board he could, in Mr. Laughlin's opinion, "be represented by anyone of his own choosing" (R. 295). This same witness said, however, that in the preliminary stages of handling with the management, which precede the reference to the Adjustment Board, the engineer must be represented only by the craft representative, i.e., by the petitioner (R. 285, 286, 294).

There is thus presented the rather strange spectacle that petitioner, through its counsel and its two witnesses, advances three separate contentions, each inconsistent with the other two. In its brief, speaking through its counsel, petitioner contends that an engineer cannot be represented, at any stage of a dispute of the second class, by any representative except the Engineers' Brotherhood, if the dispute is handled and brought to conclusion under

the procedures provided by the Act. Petitioner's General Chairman P. O. Peterson admitted, however, that the "usual manner of handling" with the management, contemplated by the Act, involved as the first step that the claim of the individual would be turned over by him to the local chairman of his organization for discussion with the employer's subordinate officials (R. 140). In other words, at the very first stage of handling under the Act, an engineer member of the Firemen's Brotherhood might and usually would select his own organization to represent him. Mr. Laughlin challenged this view, and declared that the dispute may be handled with the management only through the petitioner as the craft representative, though conceding that in the final stage (before the Adjustment Board) the individual may choose any representative he desires.

(h) The National Mediation Board Has Disapproved in Principle the Contentions Here Advanced by Petitioner.

Several times, in the course of its argument, petitioner refers to decisions of the National Labor Relations Board, and quotes at length from such decisions, apparently regarding them as having authoritative value, even though rendered pursuant to another and wholly distinct statute (the National Labor Relations Act). But petitioner in its argument wholly ignores a letter (Ex. B, R. 209-228) written on January 4, 1936, by Mr. J. W. Carmalt in his official capacity as a member of the National Mediation Board, addressed to the chief executive officers of the Engineers' and Firemen's Brotherhoods, in which the official views of the Mediation Board were set forth at

length. Certainly such a pronouncement, if duly authenticated (and the authenticity of the letter was conceded by petitioner: R. 209), rendered by the Chairman of a Board especially created and functioning under the Railway Labor Act, possesses much greater force than any expressions of the National Labor Relations Board. We feel warranted, therefore, in calling certain portions of the letter more directly to this Court's attention. Mr. Carmalt, speaking for the Mediation Board, said therein (R. 217):

"The first case of importance arising under the amended Railway Labor Act is that brought by the B. of L. F. & E. requesting the establishment of a rule on the International-Great Northern, which would give to the members of the B. of L. F. & E., when acting as engineers, the right to have the General Chairman of that organization represent them in grievance cases. It has not been possible to bring about a settlement of this case for the reason that owing to local conditions the Company has declined. to serve notice to open that provision of the engineers' contract which gives to the B. of L. E. the exclusive right of representation of engineers. This Board has ruled that a contract giving exclusive right of representation for grievance cases to any organization is unlawful under the amended law. It said in a letter to the management:

'The National Mediation Board is compelled to view as a matter of law that the supplemental contract effective October 17, 1928, with the B. of L. E. is absolutely illegal, since the Company interprets it to give to the engineers' committee a right to represent any employee who desires another rep-

resentation. No contract between a railroad employer and an organization of employees can give to that organization any right to represent an individual employee unless the employee himself assents. The right of an individual to designate the representative of his choice is guaranteed by Section 2, (Second) and the carrier is prohibited by Section 2 (Third) from interfering, influencing, coerding or seeking in any manner to prevent the designation by its employees of their representatives. There is no possible escape from this conclusion as it seems to us, since Section 2 (Eighth) provides that Paragraph Third of the Section is made a part of the contract of employment between the carrier and each employee.

"Controversy between the organizations on this Railroad is the outgrowth of local conditions for which the General Chairman of the B. of L. F. & E. was originally largely responsible but management took advantage of it to make this representation contract—of doubtful validity when made and now clearly in violation of the amended Railway Labor Act. Wherever the original fault may have laid, operation under the exclusive representation rule not only practically denies any representation under either contract for the members of the B. of L. F. & E. but produces a relationship between management and all employees in engine service that serves no good purpose."

It seems obvious that if the Act does not permit an exclusive representation rule of the type referred to in the above quotation, equally it cannot be construed as conferring the exclusive representation right in individual cases for which petitioner contends.

Repeated references are also made, in the course of petitioner's argument, to decisions under the National Labor Relations Act rendered by various courts; and in this connection articles and discussions treating with that statute and matters arising thereunder are also cited. These references are at best of doubtful value, and in the present ·case serve merely to confuse, rather than to clarify, the issues. While the Railway Labor Act and the National Labor Relations Act no doubt are somewhat similar from the standpoint of their broad objectives, they have one important difference, already referred to, which deprives. petitioner's citations of authoritative force in the instant case: namely, that the National Labor Relations Act (Section 8, par. 3) not only permits, but even encourages, collective-bargaining agreements between employers and labor organizations representing their employees quiring membership in the duly chosen representative labor organization as a condition of biring or continuance in employment (i.e., "closed-shop" .contracts); whereas the Railway Labor Act expressly condemns and prohibits such agreements. Since it is petitioner's obvious purpose in this case to obtain the equivalent of closedshop conditions for engineers employed by the carrier, and that result would plainly follow if petitioner were successful, it is natural for petitioner here to refer to decisions under a statute which tolerates and even favors the closed-shop principle. We are certain that this Court will not permit itself to be led astray by petitioner's reliance upon discussions and interpretations of an entirely different basic principle which, though recognized by the National Labor Relations Act, is expressly rejected

in the statute here involved. Indeed, this Court has remarked the distinction between these two statutes, declaring that "decisions dealing with the legal obligations arising under the Railway Labor Act cannot be regarded as apposite" in a proceeding for enforcement of an order made pursuant to the National Labor Relations Act.

Amalgamated Utility Workers v. Consolidated Edison Co. (1940), 309 U.S. 261 (269).

Near the conclusion of its argument petitioner refers (p. 48) to an alleged "hectic conflict" over the governing principles of craft representation, occurring at or about the time when the present National Labor Relations Act (not the Railway Labor Act) was in process of evolution. The purpose of these references is obscure, since the Railway Labor Act in its present form was then on the statute books, and could not have been involved in the conflict in any way.

In any event, it is clear that the carrier has no immediate concern with interpretations accorded the National Labor Relations Act, because it is not subject to that statute. In all of its employment relations it is subject exclusively to the Railway Labor Act. Petitioner may be quite correct in asserting that the National Labor Relations Act, as passed by Congress and applied by the courts, forbids an employer to recognize individual employees, or any representative other than the organization freely chosen by the majority, for any purpose whatsoever having to do with disputes or other incidents of the employment relation: we have pointed out that that Act expressly sanctions closed-shop agreements in certain circum-

stances. Petitioner is wholly in error, however, when it attempts to accord the same interpretation to the Railway Labor Act. In the Virginian Railway case, supra, this Court specifically declared, in three separate passages in its opinion (300 U.S., at pp. 549, 557 and 559) that the Railway Labor Act does not preclude individual agreements between the employer and its individual employees; and the Court also said (at p. 548) that all that was prohibited in the case before it was an attempt by the employer to undertake collective bargaining, over the eraft agreement to be generally applicable to all members of the craft, with any representative other than the organization duly chosen by the majority for that purpose.

We conclude our argument in No. 27 with a brief comment upon the very able discussion of the representation issue which appears in the brief for the Government as amicus curiae (at pp. 54-79). The Court will have observed that we have approached the subject in somewhat different fashion than the Solicitor General. find, however, that we are in agreement with nearly, everything that is said upon this topic in his brief. Our only disagreement relates to the suggestion, on the concluding page (p. 79), that the Railway Labor Act permits an employer to agree with the labor organization representing a craft or class of its employees that the latter shall have the exclusive right to represent all members' of the craft in the handling of grievances. We believe that such an agreement is not only not sanctioned by the Act, but positively prohibited. It would be equivalent to an agreement compelling each member of that craft to join and continue in good standing as a member of the organization, thus directly contravening the provisions of Section 2, Fourth, which forbid that type of contract. For obviously, if the organization were by contract given the exclusive right of epresenting individual employees, it could impose upon each employee the requirement of membership as a prerequisite to representation; in fact, as the record herein indicates (R. 809-810), certain organizations now impose precisely that requirement.

We respectfully ask the Court to reject petitioner's contentions, as not being in accord with the plain provisions of the Railway Labor Act or the considered construction and application thereof, announced by the courts and followed by the tribunals created and functioning under the Act; and to conclude that the courts below did not err in declaring that the challenged representation rule (Art. 51, Par. 1) of the Firemen's Schedule is neither unlawful, nor in any respect an infringement upon any rights of the Engineers' Brotherhood or the Engineers' Committee.

II.

THE ISSUES RELATIVE TO THE MILEAGE-LIMITATION AND DISPLACEMENT PROVISIONS OF THE FIREMEN'S SCHED-ULE (No. 41).

(a) Summary of the Schedule Provisions Involved.

We turn now to a discussion of the issues presented by Part B of the opinion of the Circuit Court (R. 815-826; 132 F.(2d), at pp. 202-206) and the cross-petition of the Firemen's Committee in No. 41, directed to that portion of the opinion.

The provisions of the Firemen's Schedule to which this portion of our discussion is addressed are set forth in full in the original complaint in the District Court (Par. 9; R. 7-12), and include: (a) Article 43, Sections 1, 2, 3, 4, and 6 (R. 604-606, 608), which state the conditions under which engineers, when "demoted" from the engineers' working lists because of lack of business or for other reasons, may at once exercise their seniority as firemen in order to enter and remain in the firemen's ranks, and by so doing displace other firemen their juniors from the jobs held by the latter; (b) the Addendum to Article 43 (R. 629-632), which provides a method of regulating the maximum "mileage" (earnings) of individual enginemen who, during the same month, serve for part of the time as engineers and the remainder as firemen; and (c) the questions and answers appended to Article 37, Section 15 (R. 587), which require the carrier to call "demoted" engineers holding regular firing assignments for service as emergency engineers in accordance with their previously-acquired seniority as engineers, and so prevent such men from being "run around", and thereby deprived of their guaranteed earnings as firemen.

(b) The Findings and Conclusions of the Courts Below Respecting Such Schedule Provisions.

The trial court held that all of these provisions were valid, and made appropriate findings and conclusions (Findings 10, 11(a), 13, 14; Conclusions 3, 4, 5(b); R. 51-53, 56-57). Specifically, as to Article 43 and the Addendum thereto, the trial court found (Finding 11(a); R. 52):

"11. (a) The provisions of Article 43, Sections 1, 2, 3, 4, and 6, and the Addendum to Article 43, Application of Mileage Regulations to Part-Time Men, of the Firemen's Agreement, were and are intended to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is intended to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or minimum miles or hours."

As to the questions and answers under Article 37, Section 15, the trial court found (Finding 14; R. 53):

"14. The Questions and Answers under Article 37, section 15, of the Firemen's Agreement were and are intended and reasonably calculated to protect the eraft of firemen in their rights under said section and have a reasonable relation to the firemen's seniority rules."

Both these findings, and the conclusions accompanying them, were challenged by the Engineers' Committee upon its appeal to the Circuit Court (R. 784-787). The Circuit Court affirmed the trial court's judgment and decree, in so far as it relates to Article 43 and the Addendum, and in fact ordered that the decree be specifically amended by inserting Finding 11(a) as a part of Paragraph b thereof (R. 818). The Circuit Court concluded, however, that the questions and answers under Article 37, Section 15, were invalid in so far as they related to the entry of a fireman into the craft of engineers, and ordered the

decree modified accordingly (R. 826). The cross-petition of the Firemen's Committee particularly challenges this latter conclusion (see pp. 14-20 of that petition; and Subdivision III, pp. 30-33 of the brief for the Firemen's Committee), and also calls into question certain expressions used by the Circuit Court in the opinion, which are apparently susceptible of being construed as a limitation upon the scope and effect of Article 43, to the extent that it prescribes the conditions under which engineers, upon demotion, may exercise, and continue to exercise, the right to displace and take the jobs of junior firemen. In particular, the Firemen's Committee asserts that the Circuit Court erred in its statements: (i) that the "Railway and the Firemen's Committee agreed" that these provisions of Article 43 are "solely conditions of engineers" entry into and their employment as firemen and do not control engineer employment" (R. 822); (ii) that the trial court's interpretation of these provisions is that which the Engineers' Committee has claimed to be correct (R. 823); and (iii) that "the Act contemplates that the cleavage of the powers of the firemen and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one eraft or the other" (R: 824).

(c) Nature and Basis of the Displacement Privilege Extended to the "Demoted" Engineers.

In order that the purpose and function of Article 43 may be fully understood, certain important basic facts must be constantly kept in mind:

First, all engineers in the carrier's employ also hold seniority as firemen. Most of the engineers have been promoted from the ranks of firemen. A few have been "hired", i.e., employed directly as engineers, without having first served the carrier as firemen. However, even these hired engineers also have seniority "dates" as firemen, which by agreement are the same as their "dates" as engineers (R. 172, 603).

Second, both the Firemen's Schedule (Art. 43; R. 604-612) and the Engineers' Schedule (Art. 32, Sec. 6; R. 435-440) provide, in substantially identical language, that when an engineer is "cut off" the engineers' working list (i. e., "set back firing", because of lack of sufficient traffic to require his continued service as an engineer) he may immediately become a fireman, with right to displace any fireman his junior, subject only to the existence of certain conditions as to average or actual earnings of the group of engineers from which he has been cut off, and to which, as traffic increases, he will necessarily return.

Third, the firemen's organization is conceded by the Engineers' Committee (R. 109-110) to have the exclusive right to negotiate and agree with the carrier respecting conditions which shall govern, when men who are cut off as engineers undertake to enter, or to remain in, the ranks of firemen, and by so doing cause other firemen to be displaced.

The privilege of becoming a senior fireman, immediately upon being cut off as an engineer, is very valuable to each of the individual engineers, and thus to the entire group. If it were not for this privilege, the engineers would at times of light traffic be compelled either to parcel out the available work among all of the engineers, with corresponding reductions in the earnings of each, or to force

some of the group, probably the juniors, entirely out of active employment. On the other hand, because the privilege exists, the junior men can be cut off the engineers' working list, and are immediately able to work as senior firemen, with the right to obtain the more desirable firing assignments, where they are certain to realize substantial earnings (R. 160). Meanwhile, the senior engineers can maintain their own individual earnings at a satisfactory level, despite the reduced total volume of engineer employment.

(d) The Right of the Firemen's Committee to Attach to the Exercise of the Displacement Privilege the Condition that "Demoted" Men Shall Be Promptly Restored to Service as Engineers.

The Circuit Court appears to have recognized that all of the foregoing is true, but to have concluded that while the engineers' exercise of the displacement privilege immediately upon demotion may be subjected to conditions imposed by the Firemen's Committee through agreement with the carrier, the Engineers' Committee has the sole right to contract respecting the return of such demotedmen to the ranks of engineers.

It may be conceded that the Firemen's Committee has no standing, under the Act, to contract directly with the carrier respecting the conditions under which an individual may become and remain an engineer, unless those conditions appertain to the exercise of some right or privilege created by and related to the firemen's craft. The essential point is, however, that the Firemen's Committee may agree, and has the sole right to agree, with the carrier as to the conditions under which men may

become and remain firemen. For the mutual benefit of the carrier and the members of the firemen's craft and, as well, the individual members of the engineers' craft and particularly those who at a given time are on the borderline between the two crafts, the Firemen's Committee has agreed that men who are cut off the engineers' working lists because of slack employment (or for any other reason) may immediately go on the firemen's working lists as senior firemen, provided that certain definite conditions are continuously satisfied respecting employment or opportunity for employment in the engineers' craft. The engineers, through their committee, have accepted the displacement privilege thus provided by the firemen in their agreement, and have written the same provisions into the Engineers' Schedule (Article 32, Section 6; R. 435-440); but of course the right is expressly subject, even as it appears in the Engineers' Schedule, to all of the conditions imposed by the firemen.

One of those conditions, expressly set forth in Sections 3 and 4, is that when an opportunity exists for all of the engineers, including such demoted men as may be restored to engineer service, to make reasonable earnings, the proper number of qualified men shall be taken from the firemen's list, in the order of their seniority as engineers; and returned to service as engineers. No one asserts that this is not a reasonable condition; no one asserts that a demoted engineer ought not to be returned to service as an engineer, when it is shown that his addition to the list will not reduce the average earnings of the entire group of engineers below a reasonable level. The objection of the Engineers' Committee expressed in its complaint, and

throughout its handling of the case generally, has simply been that this condition operates to control engineer employment.

The trial court's Finding 11(a), which the Circuit Court ordered to be incorporated in the decree, clearly states that there is no such control, except to the extent that the challenged provisions constitute conditions under which demoted engineers may exercise the displacement privilege, and continue to remain in service as firemen after having displaced junior firemen. If, however, the engineers as a craft should prefer to abandon the privilege, then, by agreement with the carrier, they may impose whatever conditions they deem necessary upon the entry and continuance of men in the craft of engineers: for example, a qualification based upon years of firing service. But if those conditions, or any of them, were a departure from the conditions appearing in the Firemen's Schedule, then the displacement privilege would be inoperative unless the conditions in the Firemen's Schedule were complied with. The engineers prefer, however, not to abandon the privilege, for as already shown it is very valuable to their craft as a whole, and to the individual mem-The engineers, or more accurately, the Engineers' Committee as their spokesman, merely wish to substitute their own control of some of the conditions under which the privilege may be exercised. To use a homely phrase, they would like to "eat their cake and have it"-to accept the privilege created by the firemen, but not the conditions attached to its exercise.

The Circuit Court therefore erred in concluding that the challenged provisions do not operate to control engi-

neer employment, or regulate the reentry of demoted men into the ranks of engineers, and in stating that the carrier and the Firemen's Committee agreed with that conclusion. The provisions in question do operate and regulate in precisely that manner; simply because they are an inseparable condition attached to the exercise of the displacement privilege, and because the engineers, when they accept and enjoy that privilege, must also accept and be bound by the limitations placed thereon by those who created it.

The trial court's findings make it quite clear that the challenged provisions do not, however, constitute any control by the Firemen's Committee of the working conditions of the engineers' craft, exercised against the will of the engineers. The Firemen's Committee, through its agreement with the carrier, exercises control over the reentry, of demoted men into the engineers' craft, and the mileage which engineers may run, only because the engineers enjoy and use the displacement privilege created and extended to them by the firemen, and are willing to pay the price demanded by the firemen: namely, the restoration of demoted men to engineer service, and their continuance in that service, when a reasonable earning opportunity exists. The engineers can disavow the bargain if they choose, and thereupon exercise complete control, subject of course to the concurrence of the carrier. over the entry of men into their craft; all of which is expressly declared and recognized in the second sentaice of Finding 11(a) (R. 52).

The Circuit Court's statements should be corrected by this Court, because they lend support to a construction

under which the engineers, as a craft, would continue to receive the benefits of the displacement privilege, but avoid the correlative obligation. Neither logic nor equity, nor a precise consideration of the provisions of the challenged sections themselves, permit such a construction, which clearly was never intended by the parties who made the agreement, nor presently accepted by them.

(e) The Reasonable Protection of the Seniority and Guaranteed Earnings of "Demoted" Engineers Called for Emergency Service Afforded by the Questions and Answers Under Article 37, Section 15, Firemen's Schedule.

The Circuit Court's conclusion as to the validity of the questions and answers under Article 37, Section 15 of the Firemen's Schedule proceeds out of the same apparent misapprehension concerning the rights of the Firemen's . Committee, to protect the members of its craft, and is therefore equally erroneous. The record shows (R. 169-172) that these questions and answers provide a means whereby a demoted engineer (working on a regular firing assignment) who is called to service as an emergency. engineer, may continue to have the benefits of the guaranteed earnings of the firing assignment from which he is taken for the emergency service. Just as the Firemen's Committee may competently agree with the carrier respecting the conditions under which demoted men may reenter and remain in firing service, so it may also agree that when a demoted man, actually working on a regular firing assignment, is called for engineer service his seniority rights as an engineer shall be properly respected. The obligation expressed in these questions and answers is simply another reasonable condition attached to the general

privilege extended to engineers of reverting to firing service and exercising, their firemen's rights, imposed by the Firemen's Committee, with the carrier's concurrence, in order that individual rights acquired through service shall not be disregarded. No essential right of the Engineers' Committee, or any member of the engineers' craft, is infringed or limited in any way through their operation; for when an individual coming within their scope has been called to, and enters upon engineer service, he performs his work pursuant to the Engineers' Schedule, and these questions and answers thereupon simply protect his peniority.

The judgment and decree of the trial court relative to the questions and answers under Article 37, Section 15, of the Firemen's Schedule, should be reinstated, and the modification thereof ordered by the Circuit Court (R. 826) should be set aside. The addition of Finding 11(a), to paragraph b of the decree, which was ordered by the Circuit Court pursuant to agreement of the carrier and the Firemen's Committee and without objection by the Engineers' Committee, is in the interest of clarity and should be allowed to stand.

III.

REQUESTED DISCUSSION

(a) Was Resort to the Declaratory Judgment Procedure Proper.
Under the Circumstances?

We concur with the petitioner, the cross-petitioner, and the Solicitor General in the conclusion that the declaratory judgment procedure has been properly employed in this case.

is clear, initially, that there was no lack of "justiciable controversy" between the parties. They have been and are in actual disagreement as to their rights, duties, and liabilities under a statute and a written agreement entered into pursuant to that statute, Under the decision in the Virginian case (300 U.S. 515, at 563) a labor organization may maintain an action to prevent the infringement of its rights as the craft representative derived under the Railway Labor Act; so that if the acts complained of in the suit in the District Court had constituted an actual and unlawful infringement, the plaintiff therein would have been entitled to an injunction. In the circumstances, and since an actual controversy exists, resort to the "milder" relief of declaratory judgment was fully warranted.

Nashville C. & St. L. Ry. Co. v. Wallace (1933), 288 U.S. 249:

Aetna Life Ins. Co. v. Haworth (1937), 300 F.S. 227;

Borchard on Declaratory Judgments, 1st Ed. p. 629

No reasons of comity can be assigned which would warrant the exercise of judicial discretion to refuse, in

the present case, to render a declaratory decree. There is no state case pending which involves the same parties, or the same or substantially similar, issues, as in Brill. hart v. Excess Ins. Co. (1942), 316 U.S. 491; nor is this a case involving the validity of taxes collected by a state or a state agency, where it appears that an adequate legal remedy is available to the taxpayer, whereby the issue can be readily determined; compare Great Lakes, eta. Co. v. Huffman (1943), U.S. L.S. 87 Led. Adv. Op. 1021). Further, this is not a case in which resort could, or should, first have been had to an ad. ministrative tribunal for the determination of the substantive issues, for no such tribunal is created by the Railway Labor Act. Neither the National Mediation Board, nor the National Railroad Adjustment Board, has any power to adjudicate a dispute of the present character. It is true that a dispute substantially identical in all its necessary aspects to the issue presented in No.* 27 was reviewed by the Emergency Board created by the President on April 14, 1937, the full report of which was submitted to the trial court as Exhibit A (R. 726-779); but that tribunal had no power, under the Act, to make any final disposition of the issues or to take any action other than to investigate and report to the President. The present case is thus not at all similar to, or controlled by, the principles followed in

Washington Terminal R. Co. v. Boswell, 124 F. (2d) 235 (affirmed by this Court, through an equal division of the Justices participating, June 14, 1943),

as the Solicitor-General properly points out in his brief (at pp. 25-26).

It is the declared policy of the Congress, expressly stated in the Railway Labor Act, to promote the peaceful and orderly settlement of disputes involving carriers and their employees. Resort to the "mild" relief of a declaratory decree of a competent court is certainly to be classed as procedure leading to peaceful and orderly settlement.

(b) Are Any of the Questions of the Construction of the Contracts Involved Governed by State or Federal Law?

The basic issue presented in each branch of the present case is as to the validity, under the Railway Labor Act, of certain particular contract provisions, rather than their construction; for the claim of the Engineers' Committee has been, and is, that the challenged clauses are invalid under the Railway Labor Act. This is purely a Federal question:

Sola Electric Co. v. Jefferson Electric Co. (1943), 317 U.S. 173 (and cases cited).

The validity of the challenged contract provisions nevertheless depends, in some measure, upon the interpretation accorded to them. The Firemen's Schedule is an agreement which, though not governed as to its details by the Railway Labor Act, is nevertheless entered into pursuant to the collective-bargaining procedure therein contemplated (Terminal Railway Association v. Brotherhood of Railroad Trainmen (1943), 318 U.S. 1) and is, moreover, in case of dispute between the parties or between the employer and an employee, as to its interpretation and application, subject to being construed by the National Railroad Adjust

ment Board. The latter is a Federal tribunal, especially created by the Act (Section 3). It may, therefore, properly be stated that there has been a Federal occupancy of the field, not merely of the validity of the agreement or the particular clauses thereof which are challenged, but also of its interpretation and application. Compare:

Phileo Corporation v. Phillips, 133 F.(2d) 663 (671).

While it is true that an individual presenting a claim under the schedule could, at his election, sue the employer in a state court (*Moore v. Illinois Central*, 312 U.S. 630), yet even in such a case interpretations rendered by means of awards of the Adjustment Board would be entitled to weight as precedents.

Furthermore, it is proper to consider that the Firemen's Schedule, although entered into at San Francisco, was intended by the parties to have much more than merely local effect in California, and therefore was not to be interpreted according to the law of that state only. The employees who come within its scope perform their work in at least seven different states (Oregon, California, Nevada, Utah, Arizona, Texas and New Mexico, but not including Washington, as suggested in the brief for the Engineers' Committee (pp. 49, 57), for Southern Pacific has no lines in Washington), and it should have the same meaning and interpretation in all. If its interpretation were controlled by the law of the state in which performance took place, it might be given one meaning upon one part of an interstate run and a conflicting meaning on the remainder. The only true and reasonable conclusion is that the agreement provisions should be construed in

accordance with Federal law, rather than state law, if there should be any lack of harmony between the applicable state and Federal principles. We know of no such, differences which would affect the present case, and none has been suggested by any party.

(c) What Bearing, If Any, Does the Norris-La Guardia Act Have Upon the Propriety of Granting the Relief Sought?

We think that the short answer to this question is that the Norris-LaGuardia Act has no bearing whatsoever in Cases Nos. 27 and 41.

The reasons may be summarized as follows:

- (i) The statute in question relates to and conditions only the issuance of injunctions or restraining orders. No such relief is sought in this proceeding.
- (ii) None of the acts complained of, or alleged by the Engineers' Committee to be unlawful, comes within the classification as to which it is provided in Section 4 of the Act that no injunction or restraining order shall issue. Therefore, even if an injunction had been sought herein, this section would not operate as a barrier.
- (iii) The decision in the Virginian case clearly indicates, as stated above, that the Act does not operate to deny injunctive relief to a labor organization otherwise entitled thereto as a means of protecting its rights as the craft representative.

CONCLUSION

For all of the reasons above set forth, the judgment and decree of the trial court, modified only by the agreed addition of Finding 11(a) as part of Paragraph b thereof, should be affirmed.

Dated: San Francisco, California, September 30, 1943.

Respectfully submitted,

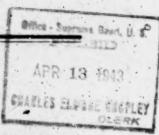
C. W. Durbrow,
Henley C. Booth,
Burton Mason,
Attorneys for Southern Pacific Company,
Respondent in Nos. 27 and 41.

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NO. 918

41

IN THE



Supreme Court of the United States

OCTOBER TERM, 1942

GENERAL GRIEVANCE COMMITTEE OF THE BROTHER-HOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association,

Petitioner.

vs.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association, and Southern Pacific Company, a corporation,

Respondents.

CROSS-PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT AND
BRIEF IN SUPPORT THEREOF

DONALD R. RICHBERG, FELIX T. SMITH, FRANCIS R. KIRKHAM, Attorneys for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

GENERAL GRIEVANCE COMMITTEE OF THE BROTHER-HOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association, Petitioner.

COMMITTEE OF ADJUSTMENT OF THE GENERAL BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COM-PANY, an unincorporated association, and South-ERN PACIFIC COMPANY, a corporation,

Respondents.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable, the Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Petitioner, General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, one of the two appellees in the court below (R. 64), respectfully prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Ninth Circuit entered in the case of General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company vs. Southern Pacific Company and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (R. 64), which decree amended and affirmed the decree (R. 791-792, 818, 827-828) of the United States District Court for the Northern District of California, Southern Division.

Respondent, General Grievance Committee of Adjustment of the Brotherhood of Locomotive Engineers has already filed a petition for certiorari to review the same decree (No. 845, October Term 1942).

The issues involved in this cross-petition are the same as those presented in a petition for writ of certiorari filed with this Court on March 9, 1943, in General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad vs. Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (No. 796, October Term, 1942).

Opinion Below

The opinion of the Circuit Court of Appeals (R. 792) is reported in 132 F. (2d) 194. There was no opinion of the District Court, but its findings of fact and conclusions of law are found in the record. (R. 44-57)

Jurisdiction

The decree of the Circuit Court of Appeals was entered on November 18, 1942. (R. 827) A petition for a rehearing was filed by respondent Engineers (R. 828) and denied on January 22, 1943, with a modification of the opinion. (R.828-829) The jurisdiction of this Court is invoked under Section 240(a) of the Judicial

Code, as amended by the Act of February 13, 1925 (28 U.S.C., Sec. 347).

Statute Involved

•The statute involved is the Railway Labor Act (Act of May 20, 1926, as amended by the Act of June 21, 1934 (45 U.S.C., Secs. 151-164)), the pertinent parts of which, because of their length, are printed in the appendix hereto.

Statement

This is a suit by respondent, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company, hereinafter called "Engineers", to declare invalid, as violating the Railway Labor Act, certain provisions of a collective bargaining contract executed by petitioner and respondent railroad, the Southern Pacific Company. (R. 2-13)

Petitioner, General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, hereinafter called "Firemen", is the recognized collective bargaining representative of all locomotive firemen employed on the railroad's Pacific Lines. (Finding 4(a), R. 45-46) As such, it has, and for many years has had, a contract with the Company covering the hours, wages and working conditions of the craft of firemen. (Finding 5, R. 46-47) Respondent Engineers is the recognized collective bargaining agent for the craft of locomotive engineers on the railroad's Pacific Lines, and now holds the contract governing the hours, wages and working conditions of that craft. (Findings 4(a) and 5, R. 45-47)

The present controversy arises from certain peculiar incidents of engine employment. An engineman commences as fireman, and in nearly all cases joins the Firemen's Brotherhood. In time he gets the opportunity to qualify as engineer; on the Southern Pacific, as on

most roads, he must qualify or lose his seniority as fireman. (R. 244-245) After he qualifies, it usually is along time before he obtains a seniority date as engineer. Thereafter, he still keeps his seniority as fireman, working as engineer only when traffic permits.

An engineer has the privilege, when the number of engineers in service is cut, to go back to firing service and to take the senior fireman's job. At one time, this privilege did not exist (R. 197); it was created on the Southern Pacific by agreement between the Railroad and the Brotherhood of Firemen in 1908. (Exh. 7, R. 637; see also R. 197)

The traffic on respondent railroad varies seasonally and also with economic conditions. (Exh. 6, R. 124, 153) In times of prosperity every man qualified as engineer may be working as such, whereas during depressions there have been times when every fireman in service held a seniority date as engineer. (Finding 6, R. 47-48)

Since the same man goes with traffic variations from engineer to firing service, and vice versa, petitioner contends that the firemen as a craft have an interest in the rules, or mileage regulations, under which an engineer may displace a fireman and a fireman advance to engineer service. When traffic declines, demoted engineers go back to firing service, displace firemen, and still earn wages. But the firemen with the least seniority lose their jobs. (R. 160-161) The Firemen contend that a few senior engineers should not be permitted to run excessive mileage, with the result of putting junior firemen out of work, and that the craft of firemen has the right to bargain and contract with the Railroad on this question.

Among others, respondent Brotherhood of Engineers seeks to have declared in violation of the Railway Labor Act the following provisions of the collective bargaining contract between the Firemen and the Railroad,

which provisions establish, only as between the Firemen and the Company, the rules determining when engineers may displace firemen as work slackens and firemen are laid off, and when, as traffic increases, firemen shall become engineers, thus releasing jobs to firemen.

"ARTICLE 43.

"Demotions and Lost Runs.

"Sec. 1. When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district

under the following conditions:

"First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3200 miles per month; on the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

"Second: That when reductions are made they

shall be in reverse order of seniority.

"Sec. 2. When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services.

are required.

"Sec. 3. Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3800 miles per month.

"Sec. 4. In the regulation of passenger or other

assigned service, sufficient men will be assigned to keep the mileage, or equivalent thereof, within the limitation of 4000 and 4800 miles for passenger and 3200 and 3800 miles for other regular service, as provided herein. If, in any service, additional assignments would reduce earnings below these limits, regulation will be affected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached.

"On road extra lists, sufficient engineers will be maintained to keep the average mileage, or equivalent thereof, between 2600 and 3800 miles per month; provided that, when engineers are cut off the working list and it is shown that those on the extra lists are averaging the equivalent of 3100 miles per month, engineers will be returned to the extra lists if the addition will not reduce the average mileage, or the equivalent thereof, below 2600

miles per month.

"Where separate extra lists are maintained for yard service, sufficient engineers will be maintained to keep the average earnings between 26 and 35 days per month; provided that when engineers are cut off the yard working list and it is shown that men are averaging the equivalent of 31 days per month, engineers will be returned to service if the addition will not reduce the average earnings below 26 days per month.

"Note: As to mileage regulations affecting parttime men, see addendum to Article 43, pages 118-

119-120." (Exh. 2, R. 604-606)

"Sec. 6. In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers." (Exh. 2, R. 608)

"ADDENDUM TO ARTICLE 43; APPLICATION OF MILEAGE REGULATIONS TO PART-TIME MEN.

"Excerpts from letter of November 30, 1934, from Mr. Wm. M. Leiserson, Chairman, National Mediation Board, to Mr. A. Johnston, Grand Chief Engineer, Brotherhood of Locomotive Engineers, Mr. D. B. Robertson, President, Brotherhood of Locomotive Firemen and Enginemen, Mr. J. A. Phillips, President, Order of Railway Conductors, and Mr. A. F. Whitney, President, Brotherhood of Railroad Trainmen, concerning the application of mileage regulations to part-time men, the conditions of which were, before the President's Emergency Board of April-May, 1937, accepted by Mr. G. W. Laughlin, First Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers, and Mr. C. V. McLaughlin, Vice President, Brotherhood of Locomotive Firemen and Enginemen, and concurred in by the Carrier, as disposing of Case No. 11 that was pending before that Board:

"'We understand also from your conversation with respect to part-time men, whether they be engineers and firemen or conductors and trainmen, a sound and practical basis for adjustment would be to permit each organization to regulate the conditions of the parttime man during the time that these men are employed at the occupation covered by such organization. Thus if the mileage limitation on any road was 3300 miles for firemen and 3800 miles for engineers, a man in freight service making 1500 miles as a fireman, then used as emergency engineer for 500 miles, would be permitted to make only 1300 additional miles as a fireman; or a man making 2000 miles as an extra engineer who is cut off the engineer's extra board, would be permitted to make only 1300 additional miles as a fireman. On the other hand, a fireman who has made his maximum mileage of 3300 miles and has been taken off on that account, might be used as an emergency engineer or go on the engineers' extra board for the remainder of the month to make the additional 500 miles up to 3800 in accordance with the engineers' mileage limitation.'

"We understood from the discussion also that nothing in such a regulation of the parttime men would prevent any organization from regulating the mileage of its own men by adjustment at the end of each month or checking period, in order to offset any excess mileage that an individual may have made. That is to say, if a trainman had made 400 extra miles as an emergency conductor in any one month or checking period, and if at the end of that month or checking period he was working as a trainman, the trainmen's organization would have the authority to regulate him to bring his mileage within the trainmen's limitation. If, on the other hand, the man was working as a conductor at the end of the month or checking period, he would be subject to the regulation of the conductors' organization. The point, as we understood it, was that each organization would be free to make adjustment for excess mileage of the men under its jurisdiction to bring them within the mileage limitations set by that organization. And the fact as to whether a man was subject to the jurisdiction of one organization or another would be established by the craft that he was working in at the end of the month or checking period.' " (Exh. 2, R. 629-632)

QUESTIONS AND ANSWERS TO ARTICLE 37, SECTION 15'

"Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineers' extra list is exhausted, who should be called?

"(b) Should a senior demoted engineer holding

^{&#}x27;Section 15 provides: "A fireman assigned to a regular run and, at the instance of the Company, called for other service, thus causing him to miss his regular run, will be paid for such other service not less than he would have earned had he been sent out in turn in the service to which assigned. This not to include overtime." (Exh. 2. R. 587). The Engineers do not contend that this provision, as distinguished from the questions and answers, is invalid.

assignment as fireman become available after man used under (a) returns to terminal or completes day's work, who should be used?

"Answer: (a) The senior available qualified man

in accordance with his seniority as engineer.

"(b) The senior available man. (Exh. 2, R. 587)

The District Court decreed that each of these provisions did not infringe any right of the Brotherhood of Engineers, and did not violate the Railway Labor Act. (R. 58-59)

The Circuit Court of Appeals amended the decree of

the District Court

(1) By adding thereto the following finding of the District Court:

"The provisions of Article 43, sections 1, 2, 3, 4 and 6, and the Addendum to Article 43, Application of Mileage Regulations to Part-Time Men, of the Firemen's Agreement, were and are intended to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is intended to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or minimum miles or hours." (R. 818)

(2) And by providing that:

The Questions and Arswers of Article 37, Section 15, are under the Railway Labor Act valid only in so far as they relate to their rights of firemen as such under said section. They are invalid under said Act in so far as they relate to entry of a fireman into the craft of engineers. (R. 827-828)

Thus, as to only one of the provisions in issue, the Questions and Answers, did the court decree that there was a fixed line between the jurisdiction of the Firemen

and that of the Engineers beyond which the Firemen had no right to contract with the Railroad. But, the court in its opinion applied this principle to all questioned provisions, stating:

"the cleavage of the powers of the firemen and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one

craft or the other" (R. 824) and,

"'that Sections 2, 3, 4 and 6 of Article 43 of the Firemen's Agreement shall be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said section * * * [are] invalid in so far as they seek to prescribe conditions of reentry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to engineers' working lists, whether in passenger, freight, or extra service." (R. 823)

In so interpreting its decree, the Circuit Court of Appeals mistakenly assumed that the Firemen and the Railroad had interpreted Article 43 and the Addendum as imposing conditions under which demoted engineers might return to firing service (i. e., according to the court, "enter" the firemen's craft), and not as imposing conditions under which firemen might advance to engineer service (i. e., according to the court, "enter" the engineers' craft). (R. 822-823) The Firemen have never agreed to this interpretation. Article 43 and the Addendum prescribe, as between the Firemen and the Railroad, the conditions under which engineers as a class are given the privilege of displacing firemen; several of those conditions require the Railroad to put men into engineer service when engineers are running beyond certain limits.

The Questions Presented

1. Do any of the provisions of Article 43, sections 1, 2, 3, 4 and 6, or of the Addendum to Article 43 violate the

Railway Labor Act as infringing on the rights of the Engineers as representative of the craft of locomotive

engineers?

2. Are not the rules under which engineers displace firemen and firemen advance to engineer service matters of common interest to the Firemen and Railroad in which the Firemen have an equal interest with the Engineers, and concerning which the Engineers do not have an exclusive jurisdiction to contract with the Railroad?

3. Do not Article 43, sections 1, 2, 3, 4 and 6, and the Addendum to Article 43 prescribe rules for the advancement of firemen into engineer service which are justifiable as a condition on the grant by the Firemen to the engineers' craft of the privilege of displacing

firemen?

4. Are not the Questions and Answers of Article 37, section 15, valid under the Railway Labor Act?

Reasons Relied On for Allowance of the Writ

1. The decision of the Circuit Court of Appeals is in conflict with a decision of identical issues by the Circuit Court of Appeals for the Fifth Circuit. In General Committee, etc., v. Missouri-K.-T.R.Co. (December 9, 1942), 132 F. (2d) 91, petition for writ of certiorari filed and numbered 796, October Term 1942, the Fifth Circuit held that the rules under which engineers displace firemen and firemen advance to engineer service were matters of joint interest to the Engineers' Brotherhood and the Firemen's Brotherhood, that the Engineers did not have an exclusive right under the Railway Labor Act to contract upon this subject, and that an agreement between the carrier and the Firemen establishing a rule for the advancement of a fireman to engineer service was not invalid.

2. The questions decided by the Circuit Court of Ap-

peals for the Ninth Circuit are important federal questions which have not been, but should be, settled by this Court. Provisions similar, if not identical, to Articles 43 and 37 are found in the contracts between almost every railroad in the United States and the craft representatives of firemen, engineers, conductors, trainmen, switchmen and other crafts. The rights of all these railroad employees will be affected by the decision in this case, for they are all directly concerned with the ebb and flow of men between two crafts.

3. Respondent Engineers have filed in this Court a petition for writ of certiorari to review a part of the judgment entered by the Circuit Court of Appeals. Petitioner submits that the entire judgment should be reviewed.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari be granted.

Dated: April 13, 1943.

Donald R. Richberg, Felix T. Smith, Francis R. Kirkham, Attorneys for Petitioner.

· IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

GENERAL GRIEVANCE COMMITTEE OF THE BROTHER-HOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association,

Petitioner.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTH-ERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PA-CIFIC LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association, and Southern Paci-FIC COMPANY, a corporation,

Respondents.

BRIEF IN SUPPORT OF CROSS-PETITION FOR WRIT OF CERTIORARI

Preliminary Statement

A statement of the case, the statute involved and the jurisdiction of this Court, together with a reference to the opinion in the court below, appear in the petition, supra:

Specification of Errors

The Circuit Court of Appeals erred, in that part of its decision under heading B: (R. 815-826)

1. In holding that Article 43, sections 1, 2, 3, 4 and 6, of the Firemen's contract and the Addendum to Article 43 did not prescribe rules for the advancement of firemen into engineer service as a condition of the privilege of engineers to displace firemen and that the Firemen agreed with this interpretation.

2. In holding that the Firemen had no jurisdiction to contract with the railroad as to rules for the advancement of firemen into engineer service where such rules were conditions of the privilege under which engineers could displace firemen, and that the Engineers had an exclusive right to contract on this subject.

3. In holding that Article 43, sections 1, 2, 3, 4 and 6, the Addendum to Article 43, and the Questions and Answers of Article 37, section 15, were in part invalid

under the Railway Labor Act.

ARGUMENT

Ι

Article 43, sections 1, 2, 3, 4 and 6, and the Addendum to Article 43 prescribed rules for the advancement of firemen into engineers' service as a condition of the privilege of engineers to displace firemen.

The mileage provisions of Article 43 commence as follows:

"ARTICLE 43

"Demotions and Lost Runs

"Sec. 1. When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:"

The article and its addendum then go on to state in detail the various conditions, which are, generally speaking, that (1) when engineers are running a certain number of miles, and thus earning a certain amount, their number cannot be reduced so as to throw firemen out of work (Sec. 1, First and Second, Petition,

supra) and (2) when engineers are running in excess of a specified mileage, thus earning more than a certain amount, then men serving as firemen must be advanced to engineer service (Secs. 3 and 4, Petition, supra).

These provisions are not individual conditions but conditions affecting all employees of the engineers' craft as a unit. It is not a single engineer who has the option of exercising the privilege to displace a member of the firemen's craft; it is all engineers.

This so-called demotion privilege of the engineers to displace firemen, thereby causing firemen to lose their jobs, is a most valuable privilege; it assures to each engineer an opportunity for continuous engine employment without fear of layoff. The Engineers recognize this value by writing into their contract with the Railroad the same privilege (Exh. 1, R. 435-436, Article 32, section 6); the provisions of the Firemen's contract now in question are found almost word for word in the contract between the Railroad and the Engineers.

Firemen's Agreement	Engineers' Agreement
Art. 43, sec. 1 " sec. 2	Art. 32, sec. 6 (a) " sec. 6 (b)
" " sec. 3 " " sec. 4	" sec. 6 (c) " sec. 6 (d) (e) (g) " sec. 6 (1)
" " sec. 6 Art. 37, sec. 15 Addendum to Art. 43	Rule (Exh. 10)

The Engineers conceded in both courts below that the Firemen had exclusive jurisdiction to create the demotion privilege by agreement with the carrier. Until 1908, the privilege did not exist on the Southern Pacific (R. 197); it was then created by agreement between the Firemen and the Railroad. (R. 197) Since

Exh. 2, R. 604-606, 608, 629-632. Exh. 1, R. 435-438, 439; Exh. 10, R. 303-306.

that time, the engineers, when it was to their advantage to do so, have never failed to exercise the privilege.

As long as all engineers have that privilege, all engineers must comply with the conditions imposed on the exercise of that privilege (Conclusions of Law 3a, R. 56), some of which are that when engineers are running excessive mileage, thereby earning excessive amounts, firemen shall be put into engineer service. (Art. 43, secs. 3, 4, and Addendum, Petition supra)

The court below is in error when it states that none of the conditions on the exercise of the demotion privilege provide for advancement of firemen into engineers' service and that the Firemen and Railroad have agreed to this. (R. 823-824) The Firemen have never agreed to such an interpretation. (Answer of Intervener (Firemen), R. 29) The trial court so found:

"None of said provisions was or is intended to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant [railroad] as to different maximum or minimum miles or hours." (Finding 11a, R. 52; see also Finding 10, R. 51)

Of course, the qualification in this finding does not mean that the Engineers could contract for different miles or hours and still retain the demotion privilege.

II

Article 43, sections 1, 2, 3, 4 and 6, and the Addendum to Article 43 do not violate the Railway Labor Act because they impose conditions under which engineers may displace firemen and because the rules governing ebb and flow between crafts are within the jurisdiction of the Firemen's Brotherhood.

Section 1, Fifth, of the Act provides in part:

"* * nor shall the jurisdiction or power of such employee organizations be regarded as in any way limited or defined by the provisions of this act."

The Circuit Court of Appeals, in direct contradiction to this part of the statute, has limited the jurisdiction of the Firemen by holding (1) that there is a definite line between the jurisdiction of the Engineers and the Firemen at a point which the court described as the "entry into one craft or the other" (R. 824), and (2) that the Firemen may not lawfully agree with the railroad on rules under which firemen will advance to engineer service even though the rules are conditions on the privilege of engineers to displace firemen. (R. 823-824)

To draw a definite line between the jurisdiction of the two Brotherhoods is illogical and impractical. If the two crafts were entirely separate and independent, perhaps such a line could be drawn. Or, if the flow of workers were entirely in one direction, such a line might be drawn. Thus, when a fireman became an engineer, if that ended forever his service as a fireman, it might be possible to draw the hard and fast line suggested.

But the flow of workers between the two crafts is a two-way flow. Firemen become engineers and engineers become firemen. It would be unrealistic to assume that the promotion of firemen to engineers is a matter with which the engineers are primarily concerned, and the demotion of engineers to firemen is a matter with which the firemen are primarily concerned. The fact is that the firemen, the engineers, and the railroad are deeply concerned with this ebb and flow of workers. It is absolutely necessary to have the firemen available for service as engineers when traffic temporarily increases.

If a fireman, once called to serve as an engineer, had

to leave the firemen's craft and had no right to return to firing, he would refuse promotion because he could not afford to lose a senior, well-paid position as fireman to accept a few weeks' employment as an engineer, and be out of work for months thereafter. Should firemen so refuse promotion, the railroad would be compelled to hire additional engineers, which, as a matter of fact. could not be done. Or, the road would be compelled to overwork its existing force, which, in many cases could not be done, either because traffic could not be handled in this way, or because resulting hours of service would be excessively long and perhaps in violation of law. The requirements of railroad service, the requirements of public service, compel some arrangement for the temporary promotion of firemen and for the temporary demotion of engineers in order to maintain a flexible service.

Furthermore, the effort to draw an absolute line has the effect of overlooking the interest and rights of the employer. If one group of craftsmen will not make a contract, satisfactory to the employer, covering certain work which is also performed by another group of craftsmen, there should be no legal barrier to the right of the railroad to make a contract with the employees who are qualified and ready to do the work.

Admittedly, the Firemen have the right to impose conditions upon the privilege of demoted engineers to displace firemen, and the conditions imposed are completely logical. The Firemen do not wish to permit engineers to exercise the demotion privilege if the engineers are going to run such excessive mileage that large numbers of engineers will be taking firemen positions and preventing firemen from being promoted to engineers. So the firemen insist on certain limitations upon the mileage to be run by engineers as a condition of the privilege of engineers to be demoted and displace fire-

men. Further, the railroad finds it necessary to have available firemen who will serve temporarily as engineers and, in order to protect their jobs, the railroad also wants an agreement with the firemen that these temporary engineers can return to firing service when there is no more work for them. Recognizing this, the engineers have written in their contract with the railroad their demotion privilege, which is definitely contingent upon mileage limitations as shown by their own contract. (Exh. 1, R. 435-438, 439; Exh. 10, R. 303-306)

The Fifth Circuit has ruled that the ebb and flow of men between crafts is a matter of joint interest concerning which both the Firemen and Engineers may properly agree with a carrier (General Committee, etc. vs. Missouri-K.-T. R. Co. (1942) 132 F. (2d) 91, 94):

"It is clear that any rule which provides for the promotion or demotion from service as an engineer concerns engineers. It is equally clear that when the promotion involves the taking of a fireman from his craft to become an engineer, or the demotion makes the engineer to become a fireman with a superior seniority that may affect the seniority of all other firemen, the craft of firemen is concerned. Both crafts are interested in a rule for transfer of men from one to the other."

For these reasons, the court decreed (132 F. (2d) 95):

"That the appellant Committee as the representative of the engineers has not the exclusive right under the Railway Labor Act to confer and agree about the rules for transferring employees from the craft of firemen to the craft of engineers, or vice versa; but the matter being the concern of both crafts, the representatives of both crafts are by the Act directed to confer and if possible agree."

The questions and answers of Article 37, Section 15, do not violate the Railway Labor Act.

Article 37, Section 15, of the Firemen's Agreement provides:

"A fireman assigned to a regular run and, at the instance of the Company, called for other service, thus causing him to miss his regular run, will be paid for such other service not less than he would have earned had he been sent out in turn in the service to which assigned. This not to include overtime." (R. 587)

Then follow the questions and answers which the Engineers seek to have declared invalid. (R: 587)

The purpose of Section 15 is clear. If the Railroad requires a fireman to leave his job and to take another position, the Railroad should assure the fireman that he will earn on the new job at least as much as he would have earned on the old job. The questions and answers prevent the Railroad from evading Section 15 or avoiding payment of the guaranteed mileage. (R. 169-172) They relate (a) to calling "a fireman for service as an emergency engineer," and (b) to the status of "a senior demoted engineer holding assignment as fireman" who becomes afterwards available, and are reasonably calculated to protect the craft of firemen. (Finding 14, R. 53)

The questions and answers are but rules which govern the movement of men between crafts, a field of joint interest to the firemen and engineers. For the reasons advanced under Part II, *supra*, the Firemen contend that it is within their jurisdiction to contract upon this subject and that the provisions do not violate the Railway Labor Act.

CONCLUSION

It is respectfully submitted that a writ of certiorari should issue.

Dated: April 13, 1943.

Donald R. Richberg, Felix T. Smith, Francis R. Kirkham, Attorneys for Petitioner.

(Appendix Follows)

APPENDIX

The Railway Labor Act

Being An Act To provide for the prompt disposition of disputes between carriers and their employees and for other purposes

(Act of May 20, 1926 as amended by the Act of June 21, 1934, U.S.C. 45: 151-163)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act—

First, the term "carrier" includes any express company, sleeping car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier"; Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such

railway is operating as a part of a general steamrailroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided*, *however*, That no occupa-

tional classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or

by its or their employees, to act for it or them.

Seventh. The term "district court" includes the Supreme Court of the District of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act."

GENERAL PURPOSES

SEC. 2. (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier

in maintaining or assisting or contributing to any labor organization, labor representative; or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues; fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues. fees, assessments, or other contributions: Provided. That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held; *Provided*, (1) That the place so specified shall be situated upon the line of

the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or

in section 6 of this Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified and its employees will be handled in accordance with the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of this contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the em-

ployees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. The willful failure or refusal of any carrier, its officers, or agents to comply with the terms of the third, fourth, fifth, seventh or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than \$1,000 nor more than \$20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply

to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES— INTERPRETATION OF AGREEMENTS

SEC. 3. First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment

Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accord-

ingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board: and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five

of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheetmetal workers, electrical workers, tar men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national

labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such

disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

- (j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.
- (k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided*, *however*, That final awards as to any such dispute must be made by the entire division as hereinafter provided.
 - (1) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate. select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators.

and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party. shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

(6) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier. to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such an order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits; except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

at its place of meeting.

(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(u) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the

respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: Provided, however, That the chairmanship and vice chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

- (v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.
- (w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional

board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

NATIONAL MEDIATION BOARD

SEC. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Gov-

ernment, a board to be known as the "National Mediation Board", to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term of which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of \$10,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws. such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1923, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salafies and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration. and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, any such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. All officers and employees of the Board of Mediation (except the members thereof whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

FUNCTIONS OF MEDIATION BOARD

SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a

carrier may invoke the services of the Mediation Board in any of the following cases:

- (a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.
- (b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency if found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said

Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly to select another arbitrator in the same manner as provided in this Act for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed

with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy, it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place in which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

- (e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.
 - (f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.

SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay,

rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty. days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

ARBITRATION

SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: Provided, however, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three, the carrier or car-

riers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board, and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to

complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided*, *however*, That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Upon notice from the Mediation Board that the

parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality

to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district

wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office, and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: Provided, however, That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein

said arbitration is being conducted to issue the necessary subpænas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpænas. In the event of the failure of any person to comply with such subpæna, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in the Act to regulate commerce approved February 4, 1887, and the amendments thereto.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpæna.

Sec. 8. The agreement to arbitrate-

- (a) Shall be in writing;
- (b) Shall stipulate that the arbitration is had under the provisions of this Act:
- (c) Shall state whether the board of arbitration is to consist of three or of six members:
- (d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;
- (e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to

decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

 (g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any

time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

- (k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;
 - (1) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts

determined by said award and as to the merits of the controversy decided;

- (m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and
- (n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: Provided, however, That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

SEC. 8. If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

SEC. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the

merits and facts of the controversy submitted to arbitratio: and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbi-

trate: or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: Provided, however, That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: Provided further, That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided*, *however*, That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

EMERGENCY BOARD

SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: Provided, however. That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the

chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

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CHARLES FLANGE CHOPLE

NO. 41

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

GENERAL GRIEVANCE COMMITTEE OF THE BROTHER-HOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association,

Petitioner.

vs.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association, and SOUTHERN PACIFIC COMPANY, a corporation,

Respondents.

BRIEF FOR PETITIONER

(On writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.)

DONALD R. RICHBERG,
FELIX T. SMITH,
FRANCIS R. KIRKHAM,
L. F. KUECHLER,
Attorneys for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

GENERAL GRIEVANCE COMMITTEE OF THE BROTHER-HOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association,

Petitioner.

vs.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association, and SOUTHERN PACIFIC GOMPANY, a corporation,

Respondents.

BRIEF FOR PETITIONER

(On writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.)

· Opinion Below

The opinion of the Circuit Court of Appeals (R. 792) is reported in 132 F(2d) 194. There was no opinion of the District Court, but its findings of fact and conclusions of law are found in the record. (R. 44-57)

Jurisdiction

The decree of the Circuit Court of Appeals was entered on November 18, 1942. (R. 827) A petition

for a rehearing was filed by respondent Engineers (R. 828) and denied on January 22, 1943, with a modification of the opinion. (R. 828-829) The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C., Sec. 347).

Statute Involved

The statute involved is the Railway Labor Act (Act of May 20, 1926, as amended by the Act of June 21, 1934 (45 U.S.C., Secs. 151-164), the pertinent parts of which, because of their length, are printed in the appendix to the cross-petition filed herein.

Statement of the Case

The respondent, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of the Southern Pacific Company, hereinafter called "Engineers," filed this suit for a declaratory judgment in the District Court, seeking to have the court declare invalid, as violating the Railway Labor Act, certain provisions of a collective bargaining contract executed by petitioner and respondent railroad, the Southern Pacific Company. (R. 2-13)

The petitioner on this cross-petition, General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, hereinafter called "Firemen," is the recognized collective bargaining representative of all locomotive firemen employed by the respondent railroad. (Finding 4(a), R. 45-46) The cross-petitioner has, and for many years has had, a contract with the company covering hours, wages, and working conditions of the craft of firemen. (Finding 5, R. 46-47) Respondent Engineers is the recognized collective bargaining representative for the craft of locomotive engineers employed by the respondent railroad and now holds the contract governing the hours.

wages, and working conditions of that craft. (Find-

ing 4(a) and 5, R. 45-47)

The Engineers' suit is based on their claim that certain provisions of the Firemen's contract infringe upon the right of the Engineers to contract exclusively for the craft of engineers and that therefore such provisions are invalid under the Railway Labor Act.

The Firemen contended successfully in the District Court that they were authorized, under the Railway Labor Act, to agree with the railroad upon the provisions of their contract challenged by the Engineers. Those provisions were therefore held valid, under the Railway Labor Act, by the District Court. (R. 57)

These challenged provisions of the Firemen's contract covered two subjects: First, the right of the Firemen's organization to represent its members in the adjustment of grievances whether working as firemen or as engineers; second, the right of the Firemen to impose conditions upon the exercise by engineers of the privilege of being demoted to firing service and displacing firemen when the Railroad finds it necessary to reduce the number of engineers on the engineers' working list.

The Circuit Court of Appeals sustained the District Court in its findings and conclusions, sustaining the right of the Firemen's organization to represent its members in grievance cases whether arising out of their work as firemen or as engineers. Whereupon, the Engineers filed a petition in this Court for a writ of certiorari to review this part of the decision of the Cir-

cuit Court of Appeals.

The Circuit Court of Appeals also sustained the right of the Firemen to impose conditions on the exercise of the demotion privilege by engineers, but modified somewhat the exact holding of the District Court as to the construction and validity of the conditions imposed in the Firemen's contract on the exercise of the demotion privilege. Therefore, the Firemen filed a cross-petition in this Court for a writ of certiorari to review that part of the decision, submitting that the entire judgment of the court should be reviewed.

Since this Court now has before it the entire judgment of the Circuit Court of Appeals, and since the representation issue and the demotion privilege issue arise out of the overlapping interests of firemen and engineers, and the fact that the membership of each craft organization includes members@f both crafts, it is necessary at the outset to explain the reason and extent of the overlapping interests of the two organizations.

An engineman begins his employment as a fireman and it is in firing service that he acquires his competence to serve eventually as an engineer. A fireman, in practically all cases, joins the Firemen's Brotherhood and, while serving as a fireman, he is required, on the Southern Pacific as on most railroads, to qualify himself to become an engineer or else he will lose his seniority as a fireman. (R. 244-245) After he has qualified, however, it is usually a long time before he obtains a seniority date as an engineer-that is, when he actually begins to serve as an engineer. But even after he has become a qualified engineer with a seniority date, he keeps his seniority as a fireman. working as an engineer only when traffic permits. The traffic on the Southern Pacific, as on other railroads. varies seasonally and also with economic conditions. (Exh. 6, R. 124, 153) In times of heavy traffic, every man qualified as an engineer may be working as such. whereas during exceptionally light traffic (as, for example, during recent depressions), there have been times when every fireman in service held a seniority date as engineer (Finding 6, R. 47-48), which would

mean that a large number of firemen with years of service would be furloughed and out of actual employment.

As a result of these inevitable and recurrent fluctuations of traffic, it is highly important to the Railroad to provide that when the number of engineers must be reduced, the junior engineers can return to service as firemen, thereby permitting the Railroad to use its most experienced employees and to eliminate from active service only the less experienced firemen. But it is a severe hardship upon all firemen to be bumped down from the top of the seniority list by demoted engineers, whereby all firemen are compelled to take less desirable positions and the junior firemen are deprived

entirely of work.

The demotion privilege in favor of engineers did not always exist. (R. 197) The privilege was created on the Southern Pacific by agreement between the Railroad and the Brotherhood of Firemen in 1908. (Exh. 7. R. 637; see also R. 197) The provision for the demotion privilege was written exclusively into the Firemen's agreement down to the year 1927. Prior to that time, however, it had become evident that unless the Firemen placed conditions upon the exercise of the demotion privilege which limited its exercise by engineers, the privilege might be abused and be the cause of grave injustice to firemen. So, when the Chicago Joint Agreement was adopted in 1913 (Exh. 9A, R. 669), it was agreed between the Engineers' and Firemen's organizations, as a condition of the demotion privilege, that reductions in the number of engineers would not be made so long as engineers were averaging a certain mileage per month, and that demoted engineers would be returned to engineer service as soon as it could be shown that engineers could earn the equivalent of a certain mileage per month.

This agreement was in effect, with various revisions (Exh. 9-B and 9-C, R. 684, 701) until 1927, when the agreement was terminated by action of the Engineers. Thus, for many years, with the approval of both Firemen and Engineers, conditions were written into the contracts (first, of the Firemen's organization and later of both organizations) fixing limitations upon the mileage which engineer's could operate; thus assuring the employment of a reasonable number of engineers and requiring the return of demoted engineers to engineer service when engineers were able to earn a fixed mileage. These mileage limitations therefore served to protect firemen from being displaced by engineers who might be demoted because senior engineers were making excessive earnings, and insured. the return of firemen to their previous jobs when demoted engineers could be returned to engineer service and make reasonable earnings.

It is the contention of the Engineers in the present case that the provisions of the Firemen's contract which have the effect of regulating the mileage to be run by engineers is an interference with the exclusive right of the Engineers' Brotherhood to represent the engineers' craft in collective bargaining and in fixing the terms and conditions of employment of engineers. Concededly, the Engineers' Brotherhood is the duly authorized representative of the engineers' craft on the Southern Pacific Railroad. But it is also a fact that the existing contract between the Engineers and the Railroad specifically provides that when it is necessary to reduce the number of engineers, "those taken off may, if they so elect, displace any firemen their junior on that seniority district under the following conditions:" Then the contract also provides for mileage limitations identical in effect, and almost word-forword the same as corresponding conditions in the Firemen's contract (Exh.-1, R. 435-438; Exh. 2, R. 604, 605).

Therefore, when the present suit was brought, the Engineers were not only exercising and contracting for the demotion privilege, which admittedly they could only exercise with the consent of the Firemen, but they had actually incorporated in their agreement with the railroad substantially the same conditions on the exercise of that privilege as the Firemen had written in their agreement. Obviously, the effort to have the provisions of the Firemen's agreement declared invalid sprang from a desire to continue to exercise the demotion privilege but to have the Engineers themselves fix the conditions upon which they would exercise it.

The District Court found explicitly that all the challenged provisions in the Firemen's agreement were "conditions under which engineers may exercise the privilege of displacing firemen and of continuing such displacement," and were therefore valid. (R. 56) The Circuit Court of Appeals sustained the validity of the provisions of the Firemen's contract as to such conditions. But when the Circuit Court of Appeals considered the interpretative questions incorporated in Article 37 of the Firemen's schedule, the court amended the judgment of the District Court, which had held that these interpretative questions were valid, (R. 57) by adding to the judgment the following paragraph, succeeding Paragraph b(1):

"(b) (2) The Questions and Answers of Article 37, Section 15, are under the Railway Labor Act valid only in so far as they relate to their rights of firemen as such under said section. They are invalid under said Act in so far as they relate to entry of a fireman into the craft of engineers." (R. 826)

The effect of this amendment by the Circuit Court of Appeals is to create a great confusion as to the right

of Firemen to control the promotion of demoted engineers and possibly to deny to the Firemen the right to agree with the Railroad for the promotion of firemen in the order of their seniority. This right to regulate. seniority has always been recognized as the fundamental right of any craft and under the construction which may be placed upon the ruling of the Circuit Court of Appeals, the Firemen may be denied, not only the right to maintain a reasonable condition upon the exercise of the demotion privilege, but even the elementary right to contract as an organization for the regulation of the seniority and promotion of members of their craft. This apparent denial to the representatives of a craft of what has heretofore been recognized as a fundamental right of collective bargaining to beexercised by the duly authorized representatives of a craft, would have far-reaching evil consequences. The rights of the Firemen merit clarification and protection by this Court.

It should be emphasized that there is no issue presented to this Court as to the validity of any part of the Firemen's contract except the questions and answers to Article 37, Section 15. But in order that the entire issue may be properly understood, we quote all the provisions of the Firemen's agreement originally subject to attack by the Engineers in the District Court:

"ARTICLE 43.

"Demotions and Lost Runs.

"Sec. 1. When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

"First: That no reduction will be made so long

as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3200 miles per month; or the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

"Second: That when reductions are made they

shall be in reverse order of seniority.

"Sec. 2. When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services

are required.

"Sec. 3. Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the

equivalent of 3800 miles per month.

"Sec. 4. In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage, or equivalent thereof, within the limitation of 4000 and 4800 miles for passenger and 3200 and 3800 miles for other regular service, as provided herein. If, in any service, additional assignments would reduce earnings below these limits, regulation will be affected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached.

"On road extra lists, sufficient engineers will be maintained to keep the average mileage, or equivalent thereof, between 2600 and 3800 miles per month; provided that, when engineers are cut off the working list and it is shown that those on the extra lists are averaging the equivalent of 3100 miles per month, engineers will be returned to the extra lists if the addition will not reduce the average mileage, or the equivalent thereof, below 2600

miles per month.

"Where separate extra lists are maintained for yard service, sufficient engineers will be maintained to keep the average earnings between 26 and 35 days per month; provided that when engineers are cut off the yard working list and it is shown that men are averaging the equivalent of 31 days per month, engineers will be returned to service if the addition will not reduce the average earnings below 26 days per month.

"Note: As to mileage regulations affecting parttime men, see addendum to Article 43, pages 118-

119-120." (Exh. 2, R. 604-606)

"Sec. 6. In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers." (Exh. 2, R. 608)

"ADDENDUM TO ARTICLE 43; APPLICATION OF MILEAGE REGULATIONS TO PART-TIME MEN.

"Excerpts from letter of November 30, 1934, from Mr. Wm. M. Leiserson, Chairman, National Mediation Board, to Mr. A. Johnston, Grand Chief Engineer, Brotherhood of Locomotive Engineers, Mr. D. B. Robertson, President, Brotherhood of Locomotive Firemen and Enginemen, Mr. J. A. Phillips, President, Order of Railway Conductors, and Mr. A. F. Whitney, President, Brotherhood of Railroad Trainmen, concerning the application of mileage regulations to part-time men, the conditions of which were, before the President's Emergency Board of April-May, 1937, accepted by Mr. G. W. Laughlin, First Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers, and Mr. C. V. McLaughlin, Vice President, Brotherhood of Locomotive Firemen and Enginemen, and concurred in by the Carrier, as disposing of Case No. 11 that was pending before that Board:

"'We understand also from your conversation with respect to part-time men, whether they be engineers and firemen or conductors and trainmen, a sound and practical basis for adjustment would be to permit each organization to regulate the conditions of the part-time man during the time that these men are employed at the occupation covered by such organization. Thus if the mileage limitation on any road was 3300 miles for firemen and 3800 miles for engineers, a man in freight service making 1500 miles as a fireman, then used as emergency engineer for 500 miles, would be permitted to make only 1300 additional miles as a fireman; or a man making 2000 miles as an extra engineer who is cut off the engineer's extra board, would be permitted to make only 1300 additional miles as a fireman. On the other hand, a fireman who has made his maximum mileage of 3300 miles and has been taken off on that account, might be used as an emergency engineer or go on the engineers' extra board for the remainder of the month to make the additional 500 miles up to 3800 in accordance with the engineers' mileage limitation.'

"'We understood from the discussion also that nothing in such a regulation of the parttime men would prevent any organization from regulating the mileage of its own menby adjustment at the end of each month or checking period, in order to offset any excess mileage that an individual may have made. That is to say, if a trainman had made 400 extra miles as an emergency conductor in any one month or checking period, and if at the end of that month or checking period he was working as a trainman, the trainmen's organization would have the authority to regulate him to bring his mileage within the trainmen's limitation. If, on the other hand, the man was working as a conductor at the end of the month or checking period, he would be subject to the regulation of the conductors' organization. The point, as we understood it, was that each organization would be free to make adjustment for excess mileage of the men under its jurisdiction to bring them within the mileage limitations set by that organization. And the fact as to whether a man was subject to the jurisdiction of one organization or another would be established by the craft that he was working in at the end of the month or checking period." (Exh. 2, R. 629-632)

"QUESTIONS AND ANSWERS TO ARTICLE 37, SECTION 15

"Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineers' extra list is exhausted, who should be called?

"(b) Should a senior demoted engineer holding assignment as fireman become available after man used under (a) returns to terminal or completes

day's work, who should be used?

"Answer: (a) The senior available qualified man in accordance with his seniority as engineer.

"(b) The senior available man. (Exh. 2, R. 587)"

Specification of Errors

The Circuit Court of Appeals erred in that part of its decision under heading B: (R. 815-826)

(1) In holding that Article 43, Sections 1, 2, 3, 4, and 6, of the Firemen's contract, and the Addendum to Article 43, did not prescribe rules for the advancement of firemen *into* engine service as a condition of the privi-

Section 15 provides: "A fireman assigned to a regular run and, at the instance of the Company, called for other service, thus causing him to miss his regular run, will be paid for such other service not less than he would have earned had he been sent out in turn in the service to which assigned. This not to include overtime." (Exh. 2, R. 587) The Engineers do not contend that this provision, as distinguished from the questions and answers, is invalid.

lege of engineers to displace firemen, and that the

Firemen agreed with this interpretation.

(2) In holding that the Firemen had no jurisdiction to contract with the Railroad as to rules for the advancement of firemen into engineer service where such rules were conditions of the privilege under which engineers could displace firemen, and that the Engineers had an exclusive right to contract on this subject.

(3) In holding that Article 43, Sections 1, 2, 3, 4, and 6, the Addendum to Article 43, and the Questions and Answers of Article 37, Section 15, were in part

invalid under the Railway Labor Act.

Summary of Argument

I

The Firemen contend that, as conditions imposed on the demotion privilege granted to the Engineers, the Firemen had a right to contract regarding the regulation of the mileage to be run by engineers and also as to the return of demoted engineers to engineer service. These contractual provisions were all designed to protect the firemen from any abuse of the demotion privilege by Engineers and to maintain the seniority rights of firemen.

II

The Firemen agreed that the provisions of their contract (Article 43, Sections 1, 2, 3, 4, and 6) were to be interpreted as conditions upon the exercise of the demotion privilege, but did not agree, as stated in the opinion of the Circuit Court of Appeals, that "the Railway and the Firemen's Brotherhood agree that they were solely conditions of engineers' entry into and

In view of possible misunderstanding of this specification, repeated from the cross-petition for a writ of certiorari in this case (a misunderstanding made evident in the Solicitor General's brief amicus curiae (page 50).), this specification will be clarified and elaborated in the Argument, infra.

their employment as firemen, and do not control engineer employment." (R. 822) It should be obvious, first, that these conditions do affect the employment of engineers; and so long as the Engineers utilize and indeed contract for the demotion privilege, the conditions attached to the exercise of that privilege will continue to affect engineer employment.

Furthermore, the Firemen contend that they have a right to contract regarding the promotion of men from firing service, whether demoted engineers or not, first, as a condition upon the exercise of the demotion privilege and, second, to establish and maintain rights of seniority for firemen, a matter within the exclusive bargaining power of the Firemen's Brotherhood.

ÌII

The Circuit Court of Appeals, in holding that the contested provisions of the Firemen's contract were in part invalid, under the Railway Labor Act, enunciated the doctrine that "the cleavage of the powers of the firemen and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other." (R. 824) The Firemen contend that this is an artificial and impractical line of cleavage, first, because, as a condition of the demotion privilege, the Firemen have the right to require the return of demoted engineers to engineer service in the order of their seniority (which determines demotion); and, second, that in the establishment and maintenance of the seniority rights of firemen, the Firemen's Brotherhood has a right to contract for the promotion of men in firing service to engineer service in accordance with their seniority. The provisions of the Firemen's contract held by the Circuit Court of Appeals to be invalid in so far as they relate to entry of a fireman into the craft of engineers are therefore valid exercises of the rights of the Firemen.

ARGUMENT

I

The contested provisions of the Firemen's contract were valid conditions imposed upon the exercise of the demotion privilege by engineers.

Article 43 of the Firemen's contract begins as follows:

"ARTICLE 43,

"Demotions and Lost Runs.

"Sec. 1. When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:" (R. 604)

In strict construction of a carefully drawn legal document, the next two subparagraphs, "First" and "Second," are plainly intended as expressing the described conditions upon the exercise of the demotion privilege. The following sections, 2, 3, and 4, and (omitting Section 5, which provides for the proper computation of a fireman's mileage) Section 6, cover further conditions attached to the exercise of the demotion privilege. The Firemen and the Railway both agree to this interpretation of Sections 2, 3, 4, and 6. They are the sole parties to the contract whose interpretation should be conclusive as to its meaning.

So the Engineers are compelled to treat their objection to these sections as an objection to the imposition of such conditions. They cannot contend that they are independent provisions and, in the brief of respondent on the cross-petition of petitioner in the present case, counsel for the Engineers expressly state that "the

Circuit Court of Appeals did not err in holding that Sections 2, 3, 4, and 6 of Article 43 of the Firemen's agreement shall be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft." But counsel for the Engineers continue their interpretation of the ruling of the Circuit Court of Appeals as follows: "* * "and that said sections are invalid in so far as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to the engineers' working lists." (Brief of respondent on cross-petition, page 3)

Thus it is apparent that the Engineers are attempting to make the artificial line of cleavage laid down in the opinion of the Circuit Court of Appeals into a barrier forbidding the Firemen to maintain in promotion the established seniority rights of men in firing service. But this contention would deny to the firemen the right to impose a condition upon the demotion privilege which is vitally essential to prevent abuses of that privilege.

The Engineers' position, in effect, is this: When the Firemen grant the demotion privilege, they can impose conditions to determine when engineers can displace firemen and the Firemen can, presumably, provide when demoted engineers must cease firing; but the Engineers exclusively can determine when men who are pushed up and out of firing service can resume employment as engineers. Such a doctrine would impose an unwarranted and unreasonable limitation upon the right of the Firemen to impose conditions upon the demotion privilege. It would also authorize the Engineers to control the exercise of seniority rights by a fireman who is either a demoted engineer or is eligible for promotion.

The entire argument of the Engineers is based on a wilful ignoring of the actual conditions of engine service. Where a craft may be regarded as an original craft, into which unskilled men enter through a process of training and possible apprenticeship, it may be proper for the craft union and the employer to contract regarding the conditions under which persons may be employed and may establish seniority rights. Certainly no other craft organization would have a legitimate interest in such questions except, for example, in a case where men may work side-by-side, dependent on each other's skill for the efficiency or safety of their work. In such instance, one craft might have a legitimate interest in agreeing with an employer upon the qualifications and competence of co-workers.

But here we have the situation of an engineers' craft which draws substantially all its employees from the firemen's craft. Even an engineer hired by a railroad for the first time as an engineer will almost certainly have served previously somewhere as a fireman. We have also the situation where firemen on the Southern Pacific and on most railroads are required to take promotional examinations and to qualify for service as an engineer, the penalty for failure being loss of seniority as a fireman. (R. 244-245) We have the further situation that, in the interest of the public service, it is the Railroad's desire to have a reservoir of competent engineers in their demoted engineers who are serving as firemen or in firemen who have qualified for promotion.

Thus it becomes a matter of major and imperative interest to firemen to have a definite arrangement with the Railroad providing for their promotion in order of their seniority. Particularly when the Firemen permit the demotion of engineers to firing service and the displacement of senior firemen, they are deeply concerned

Apparently the Solicitor General agrees that the Firemen have this right. (Brief, p. 39-40)

with the promotion of men *from* firing service in the order of their seniority; and have a right to insist, as a condition of the demotion privilege, that firemen shall be promoted when engineers are running sufficient mileage to provide reasonable employment for demoted engineers.

When the Engineers assert that promotion and a return to engineer service are the *exclusive* concern of the engineers' craft, they deny reality and attempt to establish an artificial and unwarranted authority in the engineers' craft. It seems plain (and is conceded) that the Firemen, as a condition of the demotion privilege, can require that engineers shall only be demoted when there is insufficient work for all of them. It should be equally plain that the Firemen have the right, by a corresponding condition, to require that such demoted engineers shall be promoted back to engineer service when there is sufficient employment for more engineers than are working.

In effect, the Engineers say: "Oh yes, you can promote a demoted engineer but he won't have a job unless we agree to it; and, although demoted in order of seniority, we will restore a demoted engineer to engineer service in the order that we determine." It is obvious that the sole purpose of such an unreasonable claim is to give the Engineers' Brotherhood such a control over promotions that they can compel any man having a seniority date as an engineer to join their organization in order to get fair treatment.

This claim of the Engineers puts an artificial Imitation on the conditions which the Firemen are justified in imposing on the exercise of the demotion privilege. This limitation is peculiarly indefensible when it is recognized that the establishment of seniority rights for firemen, clearly an exclusive concern of the Firemen's Brotherhood, is thus interfered with and disor-

ganized by action of the craft which has no authority to establish such seniority rights. Where there is no regular promotion out of the service performed by one craft into the service performed by another, the authority of a craft to contract with the employer regarding the seniority rights of its members is not subject to dispute or qualification. But in the present instance. the sole promotion and open highway of promotion is from firing service into engineer service. In these circumstances, the proposition that entry into engineer service is controlled exclusively by the engineers' craft means to impose an effective and unreasonable limitation upon the right of the firemen's craft to establish and maintain the seniority of its members. Such a limitation becomes plainly indefensible when the firemen's craft at the same time is granting to the engineers' craft the privilege of demotion and the privilege of displacing. senior firemen.

If the Engineers did not have and did not exercise any demotion privilege, there would still be a question as to whether, when firemen have established seniority rights by a contract with the Railroad, the Engineers could create, by contract with the Railroad, a right to ignore the firemen's seniority and to designate, at the will of the Engineers, what firemen shall be permitted to obtain employment as engineers.

But in the present case, the Firemen are merely contending that, as a condition of the demotion privilege which interferes with the exercise of the seniority rights of firemen, these same firemen shall have preserved for them the substance of their right to promotion in order of seniority—not the shadow of a right to promotion without a job, but the substance of the right of promotion to a job.

Even the line of cleavage suggested by the Circuit Court of Appeals does not apply properly to the present

situation. The demoted engineer has already "entered" into the engineers' craft. When forces are reduced, he. instead of being taken out of employment, is reemployed as a fireman on the condition expressly laid down by the Firemen that he shall, under more favorable conditions, be re-employed as an engineer—thus permitting a long line of firemen to recover the seniority positions of which they have been temporarily deprived. It would be in the normal interest of the Engineers themselves to provide for the return of a demoted engineer to engineer service in order of seniority. The fact that they wish to control the conditions under which a demoted engineer will be returned to engineer service shows an ulterior purpose which can only be the injury of the interests of the firemen and their organization.

No demoted engineer having a senior firing job will be willing to leave that for unemployment as a furloughed engineer. The Firemen's Brotherhood would not wish to force demoted engineers to such a choice. But the Firemen's Brotherhood must be under pressure from the whole line of reduced firemen to push out of senior firing positions demoted engineers who ought to be employed as engineers in a reasonable distribution of engineer work. Thus, the Firemen's Brotherhood may be forced, in justice to the large majority of its membership, to take away the demotion privilege which is in the broad interest of all concerned—the Railroad. the Engineers, and the Firemen. Thus the Engineers would be able to avoid the dangerous and wrongful action on their part of abandoning the demotion privilege which is of common value to junior engineers, senior firemen, and the Railroad.

The present case presented to the Court an issue of law. It was not the function of the Court to sit as a board of arbitration, determining what contracts the

Firemen or the Engineers and the Railroad should make. The sole question presented was whether the contract with the Firemen was invalid as being contrary to an express requirement of a federal statute. That statute, the Railway Labor Act, provides simply that "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." (Sec. 2, Fourth)

It is conceded by all parties in this case that the majority representative of the craft of firemen is the Firemen's Brotherhood, and the majority representative of the engineers' craft is the Engineers' Brotherhood. It is conceded that each Brotherhoods has the right to make a contract with the carrier as the result of collective bargaining to determine the terms and . conditions of the employment of its craft. It is the holding of this Court in Virginian Railway Company v. System Federation No. 40, 300 U.S. 515, 549, that the Act "imposes the affirmative duty to treat only with the true representative and hence the negative duty to treat with no other." The correctness of that ruling is not disputed. But where there is a subject matter of contract in which the members of two crafts are interested, the first question which arises is: Have the craft organizations an overlapping jurisdiction permitting either one, or both, to make a lawful contract with the carrier?; second, if only one contract is legally permissible, which craft organization has the exclusive right to make a contract concerning the subject matter in which both are interested?

It was the primary position of the Firemen in this case, and in *General Committee v. M. K. T. R. R. Co.*, now identified in this Court as No. 23, October Term, 1943, that in the matter of the demotion and promotion of engineers and firemen there was an overlapping

jurisdiction, since it could not be denied that both the firemen's craft and the engineers' craft had a legitimate interest in this subject matter. Under these circumstances, the Firemen have contended that the Railroad either (1) could make the same contract with both organizations, the legality of which no one would dispute, or (2) could make a separate contract with that organization with which the Railroad was able to agree, covering the subject matter of common interest, so long as that contract did not infringe upon an exclusive jurisdiction of the other craft.

The Firemen have pointed out that the Engineers certainly could not make a contract to provide that engineers could be demoted to firing service and displace senior firemen from their jobs. But the Firemen have contended that the Firemen could make a contract with the Railroad granting the privilege to demoted engineers to displace firemen upon conditions reasonably related to the demotion privilege, and that if the Engineers contracted for or continued to exercise the demotion privilege, they would be bound by the conditions imposed in the Firemen's contract. In the M.-K.-T. case. the Fifth Circuit sustained the legal soundness of the Firemen's position. The court, in its opinion, described the Firemen's contract as "incomplete" but held it to be valid. It is quite evident the court meant that since the contract affected engineers, a "complete" contractual settlement of this issue would require either a tripartite contract or two contracts to the same effect between the representative Brotherhoods and the Railroad. But the court clearly sustained the right of the Firemen's Brotherhood to contract regarding this subject matter.

In the Southern Pacific case, the Circuit Court followed a similar line of reasoning as to the proper interest of the Firemen's Brotherhood in establishing reasonable conditions upon the exercise of the demotion privilege. Then the court proceeded to lay down an apparent limitation upon the conditions which the Firemen's Brotherhood might impose, and thereby established a rule limiting craft jurisdiction for which there is neither justification nor authority in the law. The court concededly had no inherent authority to limit the jurisdiction of a craft organization; and the court cited no provision in the Railway Labor Act granting it any such authority. On the contrary, the Railway Labor Act not only establishes the right of self-organization of railway employees but also contains an express prohibition against the establishment of a limitation of this right by action of any public authority purporting to rely upon the Act.

Section 1, Paragraph Fifth, of the Railway Labor Act provides a definition of the term "employee" as

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"who performs any work defined as that of an employee or subordinate official in the orders of the. Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to authority which is hereby conferred upon it to enter orders amending or interpreting such orders. Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission." (Italics ours)

Now it is the contention of the Engineers that the amendments of 1934 establishing the right of the majority of any craft to select the representative of the craft, and requiring the carrier to treat with the certi-

fied representative of a craft (Section 2, Paragraphs Fourth and Ninth), did limit and define the jurisdiction and powers of an employee organization. It is, however, a fact that Section 1 of the Act was rewritten in the amendments of 1934, and the previously-quoted fifth clause was re-enacted. Thus it seems plain that the Congress did not, in establishing majority representation, intend thereby to define the extent of craft jurisdiction.

In a general way, the jurisdiction of the various railroad crafts is fairly well understood and accepted, particularly where the crafts extend beyond the railroad industry, as in the case of machinists, electrical work-, ers, boilermakers, etc. To a certain extent, the jurisdiction of organizations such as engineers, firemen, conductors, trainmen, switchmen and telegraphers, are fairly well defined. But it should be plain that where there is a jurisdictional dispute among such organizations as machinists, electrical workers, boilermakers, or sheet metal workers, there is no provision in the Act giving any administrative or judicial tribunal the authority to decide what work comes within the jurisdiction of a craft organization. Furthermore, in the crafts peculiar to railroad service, there have always been many jurisdictional controversies between, for example, telegraphers, clerks, and dispatchers. Also, there are many cases of overlapping jurisdiction such as the present one between Firemen and Engineers, and similar issues between conductors and trainmen; or between trainmen and switchmen. It is certainly not contended that the Railway Labor Act provides any measures or any authority for limiting or defining the jurisdiction or powers of the employee organizations, which are the duly authorized representatives of an established craft.

It has been necessary for the Mediation Board, in holding an election to determine the lawful representatives of a craft or class, to list those involved in the dispute as entitled to vote; and, for that purpose, as pointed out in the Switchmen's case (before this Court also on certiorari as No. 48, October Term, 1943), it has been necessary for the Mediation Board to exercise its discretion in establishing what has been described as the functional or occupational division of employees into a craft or class-that is, to decide for example what men were engaged in the work of the craft of which a vote was to be taken. But this is the extreme limit of the exercise of any such authority under the Act; and in such a case the Mediation Board only decides as a matter of fact who are engaged in work commonly recognized as the work of a craft. But the Board has not been authorized to decide that an organization has no power or jurisdiction to make a contract concerning a subject matter in which the members of the craft represented are very clearly concerned.

We submit that if a court had before it a case in which an organization were seeking to make a contract regarding a subject matter in which the members of its craft had no interest, or only a secondary interest, the court would be justified in holding that such a contract was invalid if in conflict with an existing contract held by an organization representing the craft which clearly had a direct and immediate interest in the subject matter. But a court would certainly not be justified in holding that an organization has no right to make a contract concerning a subject matter in which its membership has a direct and vital interest. The fact that another organization may have an interest in the same subject matter does not authorize the court to choose between the two and to grant a jurisdiction to one and to deny it to the other. This should be peculiarly evident where no question is raised as to conflicting contracts, but where two organizations have two similar contracts with a railroad, as the Engineers and Firemen have in the present case, and the Engineers are seeking a declaration to the effect that the Firemen's contract is invalid, in order to render the Railroad helpless to make any contract covering the subject matter unless an agreement can be made with the Engineers.

We submit that in a case such as the present, where there is plainly an overlapping interest of two organizations in the subject matter, the court is not authorized to define or to limit the jurisdiction or powers of the contracting organization. We submit that the proper judgment would be that, since the Firemen have made a contract covering a subject matter of direct and vital interest to the members of their organization, that is a valid contract. The Engineers have the right to bargain with the Railroad and, if they should obtain an inconsistent contract, they might in that manner put pressure upon the Railroad to change its agreement with the Firemen.

But, in the present instance, since the Engineers have a contract, and desire evidently to maintain this contract which grants to their members the demotion privilege, they have neither moral nor legal basis for urging the Railroad to abrogate its contract by which the Firemen grant and impose conditions upon the demotion privilege. The Engineers certainly have no basis for their claim that the Railway Labor Act empowers a court to define the limits of the jurisdiction and powers of the Firemen's organization so as to invalidate a part of a contract covering the vital interests of the Firemen in the grant and exercise of the demotion privilege and the consequences thereof.

The Circuit Court of Appeals erred in holding that the contested provisions of the Firemen's contract were "solely conditions of engineers' entry and their employment as firemen and do not control engineer employment." The court was mistaken in its statement that "the Railway and the Firemen's Brotherhood agree" with this construction of the Firemen's contract.

It is true that the Railway and the Firemen's Brotherhood agreed that the contested provisions of the Firemen's contract were all to be interpreted as conditions imposed upon the exercise of the demotion. privilege by engineers. But it would be contrary to fact to assert that these provisions did not to some extent affect, and therefore in part "control," engineer employment. This is a vital point because the language of the opinion and the judgment of the Circuit Court of Appeals have been construed by the Engineers, with some plausibility, to mean that the Firemen can only lay down conditions as to when engineers may enter and must leave firing service; and that the Firemen cannot lay down the further condition that when demoted engineers are required to leave firing service, they must be employed as engineers in the order, of their seniority.

In behalf of the Firemen, it is submitted that the grant of the demotion privilege can properly be conditioned upon both the requirement that engineers shall not be demoted except when they are earning insufficient mileage and the condition that demoted engineers shall be restored to active employment as engineers whenever engineers are earning sufficient mileage. If the Engineers do not wish their employment to be "controlled" to this extent, they can eliminate any

such "control" of their employment by abandoning the exercise of the demotion privilege. But when the Engineers as a craft contract for the exercise of the demotion privilege, and all engineers are free to exercise it, they must, as a craft, accept all conditions reasonably imposed upon, and related to, that privilege by the Firemen.

As heretofore pointed out, unless the flow of engineers down and firemen up is determined by fixed rules which protect fully the interests of the Firemen in continuing employment and assured promotion, the majority of the Firemen would be so injured by the exercise of the demotion privilege that they could no longer afford to grant it, even for the benefit of a minority of Firemen who, because of part-time service as engineers; are interested in maintaining this privilege. Indeed this minority of Firemen would find the demotion privilege of doubtful value if, after being demoted, they did not have assurance of being restored to engineer service in the order of their seniority when compelled to leave firing service.

In addition to this interest of the Firemen's Brother-hood in requiring the promotion and restoration to encineer service of demoted engineers, as a condition of the demotion privilege, the Firemen have a profound interest in maintaining their seniority rights of promotion from firing service, whether these rights are exercised by demoted engineers or by firemen qualified for promotion. The claim of the Engineers, if supported by judicial authority, would have the effect of denying to the firemen's craft the exercise of a right to establish and maintain a miority in service, which is one of the most precious rights of the craft and which, so far as we are aware, has never hitherto been questioned.

It cannot be doubted that every craft of workers, whether engaged in railroad service or in industrial oc-

cupations, has a right to agree with an employer upon the establishment and maintenance of a seniority list with appropriate rights and opportunities of advancement. Seniority rights are well established and of long standing throughout the railroad industry. They are of very great value to firemen and to engineers. Article 42 of the Firemen's contract makes elaborate provision for the examination of firemen for promotion "according to seniority on the firemen's roster." (R. 599) This Article further provides (Sec. 3) that in case of failure or refusal to take an examination a fireman's seniority rights are reduced. Section 4 provides that, after passing the required examination, promotion and seniority will date "from first service as engineer on any class of locomotive."

Thus, seniority rights of a fireman to a job as an engineer are an essential part of the Firemen's contract; and a promotion from firing service must mean employment as an engineer or else the Firemen would be making a contract for the unemployment of senior firemen—and a promotion would be the equivalent of a furlough from service; and would be a grave misfortune. It would be a snare and a delusion for the railroad to require firemen to qualify for promotion, and to agree to promote them in accordance with seniority, and then to permit the Engineers to exercise an arbitrary discretion to permit the employment of promoted firemen as engineers, if at all, only in the order established by the Engineers.

The reality of this situation is that when firemen are promoted to engineer service, they no doubt become subject to the Engineers' contract; but not until they

are employed and are engineers. There is nothing in the Railway Labor Act compelling a railroad to make an agreement with the Engineers as to who shall be employed as an engineer. The Railroad, of course, can make such an agreement, provided it is not in conflict with the needs of public service and not in conflict with a legal agreement with the Firemen. But since no one questions the right of the Firemen to agree with the Railroad as to the seniority of firemen and as to the requirements for promotion, it is certainly within the legitimate scope of the Firemen's agreement to provide for maintaining the seniority order in which promoted firemen who are eligible to engineer service shall be called to serve as engineers.

Therefore, when we deal with the problem of the promotion of demoted engineers, we find that the restoration of such engineers (who are engaged in firing service) to engineer service is a logical and essential part of the contract in behalf of firemen which provides for their seniority and promotion; and these provisions are applicable both to demoted engineers and to promoted firemen eligible for engineer service. We point out again that it is not within the function or authority of a court to determine what agreements the Firemen shall make with the Railroad, so long as the Firemen's contract covers a subject matter in which the Firemen have a legitimate interest.

III

The Circuit Court of Appeals erred in holding that there is a line of cleavage between the firemen's and engineers' crafts "at the point of imposing conditions of entry into the one craft or the other."

In the preceding argument, we have sought to demonstrate the artificial and unwarranted nature of the division of authority between these two crafts which is apparently laid down in the opinion of the Circuit Court of Appeals. The court followed its opinion by amending the decree of the District Court by adding

the following paragraph after Paragraph (b) (1) of the decree: (R. 827)

"b. (2) The Questions and Answers of Article 37, Section 15, are under the Railway Labor Act valid only in so far as they relate to their rights of firemen as such under said section. They are invalid under said Act in so far as they relate to entry of a fireman into the craft of engineers."

The Questions and Answers referred to are set forth at the conclusion of our statement of the case, but seem to require a little explanation here.

Section 15 provides:

"A fireman assigned to a regular run and, at the instance of the Company, called for other service, thus causing him to miss his regular run, will be paid for such other service not less than he would have earned had he been sent out in turn in the service to which assigned. This not to include overtime." (Exh. 2, R. 587)

The Engineers do not contend that this provision is invalid. It is clearly intended to protect the earnings of a fireman so that if he is called for an emergency service he will not earn less than he would if he had continued to serve his regular run.

The Engineers attacked only the "Questions and

Answers" which followed and read:

"Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineers' extra list is exhausted, who should be called?

"(b) Should a senior demoted engineer holding assignment as fireman become available after man used under (a) returns to terminal or completes

day's work, who should be used?

"Answer: (a) The senior available qualified man in accordance with his seniority as engineer. "(b) The senior available man." (Exh. 2, R. 587)

The Questions and Answers were designed, according to the testimony of a railroad witness (R. 169-172) to protect the Firemen from any evasion of the guaranteed and the state of the state

teed payment.

The Southern Pacific attorney, Mr. Mason, asked the following questions which were answered by the railroad witness, Mr. Buckley, an official of the Southern Pacific who had formerly been, first, local chairman for the Firemen and, later, local chairman for the Engineers, a witness obviously well qualified to testify impartially to the meaning and effect of the contractual provisions.

"Q. (By Mr. Mason) If it were not for the provision in heavy type, the questions and answers in heavy type, could the company slide by the senior available man and call some other demoted engineer serving as a fireman in an emergency?

"A. Yes, they could then, but the question and answer appearing in heavy type prevents us from

doing that.

"Q. What does that provision do then?

"A. This provision here requires us to call the senior demoted engineer.

"Q. Even though he may be assigned to a run as

a fireman?

"A. Even though he may be assigned to a run as a fireman, and due to leave the city that evening. We are required to use him if he is the senior available qualified demoted engineer, and regardless of the fact that other qualified demoted engineers may be available in the terminal, we will say, on their lay-over day."

"Q. Does it afford any protection to the members of the firemen's craft?

"A. Well, it preserves the integrity of Section 15 of their Article XXXVII, and it also preserves the integrity of their seniority rule, which advances

men of the higher grade of service in accordance with their service as engineers."

The foregoing testimony ought to be conclusive of the fact that the Questions and Answers are a valid part. of the Firemen's contract without any qualification. To state that they are invalid "in so far as they relate to the entry of a fireman into the craft of engineers" apparently means that the Engineers can exercise some control over the execution of this provision of the Firemen's contract. Yet, as the railroad witness pointed out, the purpose and effect of these Questions and Answers is to protect the members of the firemen's eraft, to preserve the integrity of Section 15, the validity of which is not in question, and to preserve the integrity of their seniority rule which the Firemen certainly have a right to preserve. It seems that the Circuit Court must have been led into this ambiguous but confusing amendment of the decree of the District Court by the illusion that the court had somehow discovered an absolute line of cleavage between the jurisdiction of the Firemen's Brotherhood and the Engineers' Brotherhood whereby Firemen could contract for promotion but could not contract to insure to their members the substance of promotion—that is, employment as engineers in accordance with their seniority. We submit that this emphasizes once more the unfortunate and illusory nature of the line of cleavage which the Circuit Court attempts to establish. We point out again that it was not within the authority of the court to limit the jurisdiction or powers of a railway labor organization in making a contract protecting the legitimate interests of the members of that craft.

QUESTIONS PROPOUNDED BY THIS COURT

In the order allowing certiorari in this and certain other cases, counsel were requested to discuss in their Question 1: "Whether resort to the declaratory judgment procedure is appropriate in the circumstances."

In the Southern Pacific case, the Engineers' Committee brought a suit for a declaratory judgment to have declared invalid certain provisions of the contract between the B. L. F. & E. and the Railway involving the representation issue (involved in Supreme Court, No. 27) and the mileage regulation issue (involved in the present case, No. 41).

The Southern Pacific cases are clearly based on the Declaratory Judgment Act. The question as to whether they come under the Act (28 U.S.C.A., Par. 400) seems to involve either (1) whether this is a "case of actual controversy", or (2) whether administrative procedure provided in the Railway Labor Act affords a special statutory method for determining the issues, which would preclude resort to a declaratory judgment (see Washington Terminal Company v. Boswell, 124 F. (2d) 235; affirmed by equally-divided Supreme Court June 14, 1943).

(1) There is no doubt as to the existence of an actual controversy between the two labor organizations. The Engineers are claiming that the Firemen's contract infringes on statutory rights of the organization and its members. The right of representation in grievances and the right to regulate mileage both involve valuable rights to determine the earnings of employees both in the matter of regulating mileage and promotion and in the matter of adjusting grievances, which involve money payments as well as discipline. If the Firemen's

contract is valid, certain rights accrue to its members which are valuable to them and to the organization in a monetary sense. If the Engineers are being denied corresponding rights by virtue of the Firemen's contract, they have an equal monetary concern.

Whether the organizations as such have the right to protect organization interests, which involve the maintenance of their activities through maintenance of membership, is a more complicated question, particularly as they are voluntary associations not for profit. But it is clear that the committees in each case, although they may speak of organization rights, are prosecuting the rights of their members as individuals-rights which may grow out of membership, but which have a legal status in the rights conferred by statute in . the Railway Labor Act, i. e .- the right of selforganization and the right of representation in collective bargaining by representatives of their own choosing, and the right to present grievances and to have them adjusted either by agreement or through action of the adjustment boards established in the Act.

It has been long recognized that individuals may bring suit against a railroad to enforce their contractual rights as established in collective agreements (Moore v. I. C. R. R. Co., 312 U. S. 630), so it would seem that the validity of such collective agreements, being a matter underlying the determinative of the actual rights which may be the subject of suits at law, must be a subject matter as to which it is peculiarly appropriate to obtain a declaratory judgment settling questions of fundamental right that might be in issue in a multiplicity of suits.

"When a federal statute condemns an act as unlawful, the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted." (Solate Electric Co. v. Jefferson Electric Co., 317 U.S. 173, 176)

With the foregoing general propositions in mind, neither the Firemen nor the Railroad involved in these cases questioned the propriety of a resort by the Engineers to a suit for declaratory judgment. It was to the advantage of the Railroad and the organizations to have a judicial decision of the issues presented.

Nevertheless, since the suits were brought by the Engineers, it is the primary obligation of the moving party to sustain the jurisdiction, so it seems that, upon the simple basis of a general statement, the defendants might well leave it to the complainants to accept the principal responsibility for establishing the right to sue for a declaratory judgment which they must have investigated and relied upon before bringing the suits.

(2) The question as to whether there is a statutory procedure provided in the Railway Labor Act which would preclude a suit for declaratory judgment may have been raised in the mind of the Supreme Court partly because of the Washington Terminal case. However, in that case, a declaratory judgment was sought by the railroad upon an issue which had been decided against the railroad infavor of the employees. The employees had failed to bring a suit to enforce the decision of the adjustment board and the question was as to whether, within the two years allowed for the employees to

bring suit, the railroad could bring a suit for declaratory judgment and thereby obtain the judicial ruling which might be obtained at a suit of the

employees to enforce the award.

The present cases raise issues regarding the validity of contracts which cannot be submitted to the decision of an adjustment board. The function of an adjustment board is to determine disputes growing out of grievances or out of the interpretation or application of agreements, and the adjustment boards act upon the assumption of the validity of the agreement and the right of representation asserted. The boards are not judicial bodies passing upon questions of law, but fact-finding bodies composed of lay representatives of the unions. They are set up for the specific and limited purpose of passing upon issues of fact and handing down awards resulting from such findings of fact; and it is specifically provided in the Railway Labor Act, Sec. 1, Fifth: "Nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by orders of the Commission" (i. e., the Interstate Commerce Commission).

So it follows that so far as the Act establishes a right of representation, that right is based on the general provisions of the Act, with a limited duty upon the Mediation Board to conduct an election to determine who are the self-chosen representatives of the employees for purposes of collective bargaining. A careful study of the Railway Labor Act will not develop the existence of any machinery, within the Act to determine the legal issues involved in the present cases.

It has been previously held in the Clerks' case (T. & N.O.R.Co., v. Brotherhood, etc., 281 U.S. 548)

and in the Virginian Railway case (Virginian Railway v. System Federation, 300 U.S. 515) that there may be a resort to the equity jurisdiction of the federal courts to enforce the rights and obligations created by the Act. It would appear to follow that the jurisdiction of the federal courts to entertain a suit for a declaratory judgment could be properly invoked for the same purposes. It is also a fact that in the Southern Pacific case the controversy between the labor organizations over the right to represent their members was carried through the entire machinery of the Act; through consideration in conference and with the aid of the services of the Mediation Board and finally presented to a presidential Emergency Board, the findings of which, in favor of the Firemen's position, were accepted by the railroad and the Firemen. (R. 812-814; also Ex. A. R. 726)

The question may arise as to whether, after this Emergency Board action in the Southern Pacific case, the Engineers had a right to apply for a declaratory judgment. But, the essential effect of the proceedings under the Act, which culminated in the findings of an emergency board, was not to make a judicial decision but to advise the employees and the carrier of the views of a presidential Emergency Board as to the practical and just way to settle the controversy, and also of the opinion of impartial arbitrators as to the legal rights arising under the Railway Labor Act. But the Engineers may question whether, since legal rights are involved, they have not a further resort to a lawsuit to obtain a judicial decision.

It is possible that the representation issue (involved in No. 27) might be raised in the suit of an individual claiming to have been deprived of

his legal rights through a representation to which he did not agree. But, since the contract of the Firemen provided simply that an employee who was a member of the Firemen's Brotherhood had a right to be represented by his own organization, it would seem that no individual who had been so. represented would have any question to raise. On the other hand, if the contention of the Engineers were correct, and members of the Firemen's Brotherhood were thereby forced to accept a representation not of their choosing, then a legal right might arise in a fireman to prosecute a proceeding through a representative of his own selection. In other words, if the Railroad had made a contract with the Engineers, requiring a non-member to accept their representation, a right might arise subject to judicial decision. It may be contended that in the present case the Engineers are seeking to enforce a right which clearly cannot exist; that is, the right to represent an individual in the prosecution of his property rights without his consent. This argument does not simply beg the question. because there must be a substantial issue to invoke the court's jurisdiction. The Firemen do not concede that the representation claim of the Engineers is substantial.

However, the mileage question does raise the issue as to whether the rights of engineers to earn money are being denied by a contract between the Firemen and the Railroad, which raises a justiciable issue. Against this argument, however, is the defense of the Firemen to the effect that engineers' earnings are limited only as a condition of the exercise of a privilege (demotion) which they concede is granted to them by the Firemen's organization and granted only subject to their

acceptance of limitations upon earnings. Nevertheless, the mere argument of the question serves to show that the jurisdiction of the court has been invoked upon the assertion of a right which, if being violated, would warrant judicial protection. When the court finds, as it did in these cases, that the right does not exist, it would seem appropriate to have that finding incorporated in a declaratory judgment.

As a parallel, it may be noted that a litigant has no right to have a statute adjudicated invalid which is valid; but if a litigant can raise a substantial question as to the validity of the statute, he is entitled to a judgment, and, if the statute is found valid, the defendant is entitled to a judgment to that effect.

Question 2: "Whether any questions of the construction of the contracts involved are governed by state or by federal law."

Without embarking on an extensive speculation, it seems that the simple answer to this question is that the questions of the construction of the contracts which are involved in these suits are governed by federal law. The rights of the employees to collective bargaining and the obligations imposed on carriers and employees all arise under the Railway Labor Act. It is true that a suit of an employee against a railroad to recover wages due him, or to prevent a violation of contractual obligations to him, might be brought in a state court and, in many instances the enforcement and construction of contract rights and obligations will be determined by state law. But the issues raised in the present cases all require the interpretation and application of the requirements of the Railway Labor Act. They in-

volve rights and duties established by this federal statute to protect interstate commerce. These are to be determined in accordance with the requirements of the Railway Labor Act. It would seem they must be governed by federal law.

To particularize, in the Southern Pacific cases, all the contentions of the Engineers as to representation of employees are based on rights alleged to arise under the Railway Labor Act, whereas the Firemen justify their position as based on the rights of employees affirmed in the Railway Labor Act, and as based on the fundamental constitutional right of a person not to be deprived of his property without due process of law, which certainly means a right to choose his own representative for the defense of his property rights.

The mileage provisions of the Firemen's contract are attacked by the Engineers on the basis of a claim that under the Railway Labor Act the duly designated representative of the Engineers' craft had an exclusive right to contract regarding terms and conditions of an engineer's employment. The Firemen base their defense on the statutory rights of the Firemen and their duly designated representative, under the Railway Labor Act. Here is involved not primarily any question of construing and enforcing a contract—but the question of construing and enforcing a-federal law under which the complainant contends that the contract is invalid. This issue arises solely out of and should be determined solely in accordance with federal law. There is no serious dispute over what the contractual provisions mean; but primarily a question as to the extent to which the right to make the contract has been affirmed or denied by federal statute. (See Sola Electric Co. v. Jefferson Electric Co., 317 U.S. 173, 176, quoted supra.)

CONCLUSION

We submit that the judgment of the Circuit Court of Appeals amending the decree of the District Court should be reversed and the judgment and decree of the District Court should be affirmed.

Respectfully submitted,

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Attorneys for Petitioner.

In the Supreme Court of the United States

No. 918. 4 1 OCTOBER TERM, 1942.

GENERAL GRIEVANCE COMMITTEE OF THE BROTHER-HOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association,

Petitioner.

VS.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association, and SOUTHERN PACIFIC COMPANY, a corporation,

Respondents.

BRIEF OF RESPONDENT, GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, ON CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association, and SOUTHERN PACIFIC COMPANY, a corporation,

Respondents.

BRIEF OF RESPONDENT, GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, ON CROSS PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

1. Conflict of decisions.

Respondent, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines Southern Pacific Company, agrees that the decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case, in that part of said decision under heading B.

All references herein to the decision of the Circuit Court of Appeals for the Ninth Circuit are confined to that portion of the decision contained under heading B (R. 815-826, 132 F. 2d 202-6).

is in conflict with the decision of identical issues by the Circuit Court of Appeals for the Fifth Circuit in the case of General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad v. Missouri-Kansas-Texas Railroad Companyot. al., 132 F. 2d 91, as to which petition for writ of certiorari (No. 796 this term) was filed in this Court on March 8. But whereas in the Missouri-Kansas-Texas case 1943.1 there was also conflict with the decision of this Court in Virginian R. Co. v. System Federation No. 40, etc., 300 U.S. 515, in the instant case there is no conflict between the decision of this Court in the Virginian R. Co. case and part B of the decision of the Circuit Court of Appeals for the Ninth Circuit. On the contrary, the decision of the Ninth Circuit is in accord with the decision in the Virginian R. Co. case.

2. Importance of questions presented.

This respondent agrees that the questions decided by the Circuit Court of Appeals for the Ninth Circuit are important questions of federal law. In No. 796, the petitioner General Committee similarly alleged the importance of the substantially identical questions there involved and gave reasons therefor (petition No. 796, pp. 8, 18-20).

¹ In No. 796, the petitioner General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missourian Kansas-Texas Railroad alleged such conflict (petition pp. 8, 11).

3. The Circuit Court of Appeals did not err in holding that Sections 2, 3, 4 and 6 of Article 43 of the Firemen's agreement shall be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said sections are invalid in so far as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to the engineers' working lists.

In Virginian R. Co. v. System Federation No. 40, 300 U. S. 515, 548, this Court said that the Railway Labor Act "imposes the affirmative duty (upon the carrier) to treat only with the true representative, and hence the negative duty to treat with no other." . The effect of the holding of the Circuit Court of Appeals in the instant case is to declare that the carrier must treat only with the respondent as the representative of the craft of locomotive engineers concerning rules governing that craft, and hence to declare that the carrier should not treat with the petitioner, which is the representative of the craft of locomotive firemen on the respondent carrier and is not, and never has been, the representative of the craft of locomotive engineers thereon, concerning rules governing the engineers' craft. holding does not in any wise interfere with the full measure of the rights of petitioner as the representative of the firemen's craft to make with the carrier rules governing the craft of locomotive firemen, and does not in any way interfere with the negotiating by the petitioner with the carrier of rules governing the return of demoted engineers to the working lists of locomotive firemen and the length of time or the conditions under which such demoted engineers shall remain on the working lists of locomotive firemen. But it is one thing for the craft representative of the firemen to prescribe with the carrier conditions under which demoted engineers may enter, remain in, and leave the craft of locomotive firemen, and it is quite another thing for the representative of the firemen's craft to prescribe with the cartier conditions under which demoted engineers, after leaving the firemen's craft, shall or may return to the working lists of locomotive engineers, or to prescribe the regulation of engineers' mileage or the number of engineers to be assigned to engineers' working lists. The decision of the Circuit Court of Appeals clearly recognized that distinction (R. 823, 132 F. 2d, 205).

The correctness of the construction which the Circuit Court of Appeals placed upon the Act becomes clear when it'is borne in mind that the foundation of the statutory plan is collective bargaining and agreement by crafts or classes of employees and the carriers. There are and always have been two distinct crafts in engine service, one of locomotive engineers and the other of locomotive firemen. Each craft has, and for many years has had, its own craft representative, as petitioner agrees (petition p. 3). General Committees of Adjustment of the Brotherhood of Locomotive Engineers traditionally have represented the engineers' craft. and General Grievance Committees of the Brotherhood of Locomotive Firemen and Enginemen similarly have represented the firemen's craft. These representatives long have negotiated separate craft agreements with the carriers concerning the rates of pay, rules and working conditions of their respective crafts. There are separate agreements in the instant case (Ex. 1, R. 111, 326-465, Ex. 2, R. 111, 468-636). Jurisdictional disputes over rules and working conditions such as those involved here are not infrequent.1 Plainly, it is necessary that a line of demarcation or cleavage between the jurisdictions of the various crafts must be reegg

In No. 796, the Missouri-Kansas-Texas R. Co. case, for example, the Firemen's Committee negotiated rules respecting the calling of emergency engineers which were in conflict with the rules theretofore agreed to between the Engineers' Committee and the carrier on this subject (petition in No. 796, pp. 3, 4).

nized if the doctrine of exclusive craft representation is to be given its intended effect. The Circuit Court of Appeals, we submit, correctly found the line of demarcation applicable to the case at bar in holding that it is "at the point of imposing conditions of entry into the one craft or the other." (R. 824, 132 F. 2d at 205.)

It is neither illogical, impractical, nor unrealistic, as asserted by petitioner (br. 17) to draw a definite line between the crafts or the jurisdiction of the craft representatives. The fact that, as the amount of traffic fluctuates, certain employees may at one time work as engineers and at another work as firemen, or that there is what petitioner calls a flow of workers between the two crafts, does not destroy or in any wise affect craft distinctions. All this so-called flow of workers amounts to is that some men work at different times in the two crafts. But, when a man works as a locomotive engineer he enters, or returns to, the craft of engineers and works under rules agreed upon between the engineers' craft representative and the carrier, and when he works as a fireman he enters or returns to the craft of firemen and works under rules and regulations agreed upon between the firemen's craft representative and the carrier. The flow of workers is a condition which relates to the individual, not the crafts. The Circuit Court of Appeals recognized that the "ebb and flow," of men between

The Circuit Court of Appeals applied this line of demarkation to the Questions and Answers of Firemen's Article 37. Section 15, in decreeing that the Questions and Answers are valid only in so far as they relate to the rights of firemen as such, and that they are invalid in so far as they relate to the entry of firemen into the craft of engineers (R. 826, 132 F. 2d at 206). It also applied it to Article 43 of the Firemen's agreement by limiting the application of said article "to conditions under which demoted engineers enter, remain in, and leave the firemen's craft." and held that this article was invalid in so far ias, its provisions sought to prescribe conditions of re-entry into the engineers craft or to requiate the mileage of engineers or the number of engineers to be assigned to the engineers' working lists (R. 823, 132 F. 2d at 205).

the two crafts did not affect the separateness of the crafts or serve as a basis for control by the one craft or the other (R. 824, 132 F. 2d at 205-6).

Reference to Section 3 of Article 43 of the Firemen's agreement (Ex. 2, R. 604) quoted on page 5 of the petition herein, will illustrate our position. This rule reads in part as follows:

"Engineers taken off under this rule shall be returned to service as engineers, etc."

If this rule were stated so as to express the full limit of petitioner's authority as representative of the firemen's craft, it should be stated substantially as follows:

"Engineers taken off under this rule shall be required to leave service as firemen, etc."

The matter of when a man would return to service as engineer after leaving the firemen's working list would then properly be left for negotiation and agreement between this respondent as the exclusive craft representative and the respondent carrier. Such is the effect of the holding of the Circuit Court of Appeals.

Petitioner speculates as to what might happen to the supply of engineers if craft rules were drawn in accordance with the Circuit Court of Appeals' interpretation (br. 17, 18). Counsel's assumption of serious operating difficulties is mere conjecture. The carrier's expert witness was asked whether it would be practical to have engineers' mileage rules different from those of firemen. He did not say that such a situation would be impractical and answered only that it would be "more practical" to have the rules the same, explaining that the craft rules were different new in one instance wherein the engineers' agreement is applied in reducing engineers from the working lists and the firemen's agreement is applied in placing the demoted men on the firemen's lists (R. 179-80). Quite possibly, if the carrier would so agree, firemen wouldsnot

need to accept promotion. But firemen desire promotion, and it is not likely that the firemen's craft would ever adopt a rule denying the right to those of its members who had been promoted to return to firing when engineers' work was no longer available. It is a matter of self-interest of the firemen's craft to provide for such return (R, 186).

Petitioner states (br. 18) that the effort to draw the line between the crafts has the effect of overlooking the interests and rights of the employer. Significantly, the carrier, one of the appellees below, has filed no independent: petition for review in this Court, nor has it joined with the petitioner here. Apparently it is not frantically alarmed about the alleged overlooking of its interests or rights. Petitioner's simulated concern should receive scant consideration. In any event, contrary to petitioner's assertion (br. 18), the Railway Labor Act, which requires the carrier to deal only with the representative chosen by the . majority of the craft, does not countenance the making by a carrier of an agreement for a given craft, with a representative other than the majority one, even if the carrier is not able to make an agreement satisfactory to itself with the majority representative.

There is no violation of that part of Section 1. Fifth, of the Railway Labor Act reading as follows:

employee organizations be regarded as in any way limited or defined by the provisions of this Act.

as contended by petitioner (br. 16, 17): Petitioner does not contend that there are not two separate crafts. But while seeking to maintain the exclusive right of the fire, men's craft representative to control the demotion privilege governing demotion of engineers to work in the firemen's craft, it also seeks to overreach into the engineers craft, and control the promotion privilege governing promotion of men to work in the engineers craft. Since the

rules in question relate only to performance of work in one admittedly separate craft, there can be no violation of the portion of the statute quoted.

4. The Circuit Court of Appeals did not err in holding that the Questions and Answers of Article 37, Section 15, are valid only in so far as they relate to the rights of firemen as such under said section, and are invalid in so far as they relate to entry of a fireman into the craft of engineers.

The Questions and Answers (R. 9-10, 587, petition pp. 8-9) expressly purport to govern the calling and use of firemen to perform service as emergency engineers. Question, (a) asks who should be called for such service when the engineers' extra list is exhausted and it becomes necessary to call a fireman. Question (b) asks whether the man selected and used under Question (a), or a senior demoted engineer holding assignment as fireman who becomes available after the former returns to the terminal or completes his day's work, should be used to perform such service.

Petitioner concedes (br. p. 20) that Question (a) relates to calling a fireman for service as engineer. Petitioner describes Question (b) as relating to the "status" of a senior demoted enigneer holding assignment as a fireman who afterwards becomes available. This description is incomplete for, as just noted, this rule expressly provides for the use of the man designated thereby as an emergency engineer.

The calling and use of firemen to perform service as emergency engineers necessarily involves their entry into the engineers' craft. Since, as hereinbefore pointed cut, the rules governing entry into the engineers' craft are under the Act to be determined exclusively by the representatives of the engineers' craft and the carrier—and, in fact, rules on this subject have been agreed upon by the

engineers' committee and the railroad (Ex. 10, R. 302-306)—it follows that the Questions and Answers, in so far as they relate to entry of firemen into the engineers' craft, are invalid. The declaration of the Circuit Court of Appeals was precisely to this effect.

At the same time, the declaration, in providing that the Questions and Answers are valid only in so far as they relate to the rights of firemen as such under Section 15, accords to the firemen's craft all that petitioner may properly claim. As in the case of the mileage rules contained in Article 43, supra, the sole permissible area of petitioner's right of contract is the regulation of the rules governing the service of firemen working as such. In directing that a designated man be called or used as an imergency engineer, the Questions and Answers are beyond and outside of this permissible area of regulation.

Petitioner contends (br. 20) that the Questions and Answers are proper because they are reasonably calculated to protect the craft of firemen and prevent the railroad from evading Section 15 or avoiding payment of guaranteed mileage. This argument is beside the point. Assuming, arguendo, that petitioner may properly contract for such wage guarantees or penalties, the means employed to enforce or implement such contract must lie within the scope of petitioner's authority as the representative of the firemen's craft. The provisions of the Questions and Answers specifying the employment or use of firemen as locomotive engineers are beyond that authority.

CONCLUSION.

We recognize the conflict between the decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case and the decision of the Circuit Court of Appeals for the Fifth Circuit in the Missouri-Kausas-Texas R. Co. case in No. 796, and also the great importance of the ques-

tions decided in the two cases. But, while the decision of the Fifth Circuit in the Missouri-Kansas-Texas case requires review in order to correct the error of that court in its failure to follow the decision of this Court in the Virginian R. Co. case, in the instant case, since the decision of the Ninth Circuit accords with the Virginian R. Co. decision and there is no error to correct here, there is no impelling reason for granting the writ herein.

Respectfully submitted,

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In the Supreme Court of the United States OCTOBER TERM. 1943.

No. 41.

GENERAL GRIEVANCE COMMITTEE OF THE BROTHER-ERHOOD OF LOCOMOTIVE FIREMEN AND ENGINE-MEN, an unincorporated association,

Petitioner,

VS

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTH-ERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association, and SOUTHERN PACIFIC COMPANY, a corporation,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUITS

BRIEF FOR RESPONDENT, GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY.

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In the Supreme Court of the United States OCTOBER TERM, 1943.

No. 41.

GENERAL GRIEVANCE COMMITTEE OF THE BROTHER-ERHOOD OF LOCOMOTIVE FIREMEN AND ENGINE-MEN, an unincorporated association,

· Petitioner,

T'S.

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ON WRIT OF CERTIORARI TO
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BRIEF FOR RESPONDENT, GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY.

OPINION BELOW.

The opinion of the Circuit Court of Appeals (R. 792) is reported in 132 F. 2d 194. There was no opinion in the District Court.

JURISDICTION.

Judgment of the Circuit Court of Appeals was entered on November 13, 1942 (R. 791). A petition for rehearing was seasonably made and denied with modification of

opinion on January 22, 1943 (R. 828-9). The jurisdiction of this Court was invoked by petitioner under Section 240(a) of the Judicial Code as amended by Act of February 13, 1925 (28 U. S. C. § 347).

STATUTES INVOLVED.

The statutes involved are:

The Railway Labor Act, as amended (Act of May 20, 1926, c. 347, 44 Stat. 577; Act of June 21, 1934, r. 691, 48 Stat. 1185; Act of August 13, 1940, c. 664, §§ 2, 3, 54 Stat. 785; 45 © S. C. §§ 151-163), pertinent sections of which are set out in Appendix A;

The Declaratory Judgments Act (Act of June 14, 1934, c. 512, 48 Stat. 955, as amended, 28 U. S. C. § 400), which is set out in Appendix B;

The Norris-LaGuardia Act (Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. §§ 101-115), which is set out in Appendix C.

STATEMENT OF THE CASE.

Respondent, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company, hereinafter sometimes referred to as "Engineers" or "Engineers' Committee," filed its complaint in the United States District Court for the Northern District of California, Southern Division, seeking a declaratory judgment under the provisions of 28 U. S. C. § 400 to the effect that the Engineers' Committee, as the representative of the craft of locomotive engineers on said Pacific Lines, had the exclusive statutory right. by virtue of the Railway Labor Act, to treat, bargain and contract collectively with the Southern Pacific Company, hereinafter sometimes called the Carrier, concerning rules and working conditions which govern the craft of locomotive engineers; that certain provisions of a collective bargaining agreement entered into between the Carrier and

the petitioner, General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, hereinafter sometimes called "Firemen" or "Firemen's Committee," purporting to govern the craft of locomotive engineers, violated the Railway Labor Act and were invalid (R. 2-13). Respondent, Southern Pacific Company, is a common carrier by railroad engaged in interstate commerce (Findings 1 and 2, R. 44). The locomotive engineers in Carrier's employ comprise a separate "craft or class of employees" (Finding 4, R. 45) as that phrase is used in the Railway Labor Act, including its use in §2, Fourth, to wit, "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." For many years before the passage of the Act, and ever since, the Engineers' Committee has been the representative designated by the majority of the craft or class of locomotive engineers, and has collectively negotiated and entered into with the Carrier agreements, hereinafter sometimes referred to as "Engineers' Schedule," concerning rates of pay, rules and working conditions of that craft (Findings 4 and 5, R. 45, 46; Engineers' Schedule (Plaintiff's Exhibit No. 1) printed at R. 326-467, offered in evidence at R. 111). Similarly, there is a separate craft or class of locomotive firemen, and the petitioner, Firemen's Committee, is the representative thereof, and has entered into a collective agreement concerning rates of pay, rules and working conditions of the firemen's craft, hereinafter sometimes called "Firemen's Schedule" (Findings 4, 5, R. 45, 46, 47); Firemen's Schedule (Plaintiff's Exhibit No. 2, printed at R. 468-636, offered in evidence at R. 111). The Engineers' Schedule (Plaintiff's Exhibit No. 1) was entered into prior to the 1934 amendments of the Railway Labor Act. effective date was January 9, 1931 (R. 326). The Firemen's Schedule (Plaintiff's Exhibit No. 2), effective June 1, 1939, was the first Firemen's Schedule printed and published by the Firemen's Brotherhood subsequent to the 1934 amendments to the Railway Labor Act and the decision of this Court on March 29, 1937, of Virginian R. Co. r. System Federation No. 49, 300 U.S. 515 (Plaintiff's Exhibit No. 7, R. 637-659).

. The provisions of the Firemen's Schedule which were the object of an attack in the complaint were Article 51, Sec. 1 (R. 7); Article 43, Secs. 1-4, 6 (R. 7-9); certain Questions and Answers appended to Article 37, Sec. 15 (R. 9, 10); and an addendum to Article 43 (R. 10-12). The decision of the court below with respect to Article 51, Sec. 1 is not involved in the instant case but is the subject of General Committee of Adjustment of the Brotherhood of Locomotive Engineers, etc. v. Southern Pacific Company, et al., No. 27, October Term, 1943. Article 43, Secs. 1-4, and 6, the addendum to Article 43, and the Questions and Answers appended to Article 37, Sec. 15 are set out in full at pp. 8-12 of petitioner's brief herein and are not liere repeated. It was the contention of the Engineers' Committee that Sections 2, 3 and 4 of Article 43, as written, were rules and regulations purporting to govern the seniority and mileage of engineers, particularly the circumstances and conditions under which engineers should be placed on the engineers' working lists and the regulation of engineers' mileage. The Firemen's Committee contended that Sections 2, 3 and 4, as well as Section 1, First and Second, of Article 43, were conditions under which engineers were permitted to displace firemen their junior.

The District Court held that all of the aforementioned provisions of the Firemen's Schedule were valid and that none of them violated the Railway Labor Act (R. 59). The court made the following findings of fact, inter alia:

¹ Exhibit No. 7 shows effective dates of the various Firemen's Schedules as follows: April 1, 1907 (R. 637); May 16, 1910 (R. 638); May 11, 1915 (R. 642); December 1, 1918 (R. 645); January 1, 1919 (R. 647); May 1, 1929 (R. 648); June 1, 1939 (R. 653).

"11. (a) The provisions of Article 43, sections 1, 2, 3, 4 and 6, and the Addendum to Article 43, Application of Mileage Regulations to Part-Time Men, of the Firemen's Agreement, were and are intended to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is intended to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or minimum miles or hours." (R. 52.)

"14. The Questions and Answers under Article 37, section 15, of the Firemen's Agreement were and are intended and reasonably calculated to protect the craft of firemen in their rights under said section and have a reasonable relation to the firemen's seniority rules." (R. 53.)

Neither of these findings was incorporated in the decree of the District Court. The Circuit Court of Appeals ordered that Finding 11(a), aforesaid, be incorporated in the decree as an amendment thereof (R. 818), but in the opinion also placed an interpretation and limitation upon the effect of said finding as an amendment to the decree as follows:

"* * * the interpretation in effect is that which the Engineers' Brotherhood claims, namely, 'that Sections 2, 3, 4 and 6 of Article 43 of the Firemen's Agreement shall be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said sections * * * [are] invalid in so far as they seek to prescribe conditions of re-entry into the engineers' craft of to regulate the mileage of engineers or the number of engineers to be assigned to engineers' working lists, whether in passenger, freight, or extra service." (R. 823.)

The Questions and Answers appended to Article 37, Section 15 of the Firemen's Agreement relate to the call-

ing of engineers for emergency service. The Engineers' Committee and the Carrier had an agreement on this matter as follows:

"It is agreed that when it is necessary to use demoted or hired engineers as the result of the engineers' extra board being exhausted, the senior available engineer will be used, and the fact that he may have earned his maximum mileage as a fireman will not prevent him from being used as an engineer until such time as he has earned the equivalent of the maximum mileage for engineers in the combined service." (Plaintiff's Exhibit 10, R. 303-6, offered in evidence at R. 302.)

With respect to these Questions and Answersein the Firemen's Schedule, which the District Court had held valid and not in violation of the Railway Labor Act, the Circuit Court of Appeals in its decision said:

"We agree with the contention of the Engineers' Committee that the judgment erred with respect to the interpretation of the questions and answers of Article 37, Section 15, and order stricken from Section b. of the judgment the words 'Article 37, section 15, Questions and Answers,' and that there be added to the judgment the following paragraph, succeeding paragraph b.(1).

b. (2) The Questions and Answers of Article 37, Section 15, are under the Railway Labor Act valid only in so far as they relate to their rights of firemen as such under said section. They are invalid under said Act in so far as they relate to entry of a fireman into the craft of engineers." (R. 826.)

SUMMARY OF THE ARGUMENT.

Under the Railway Labor Act as construed by this Court in Virginian R. Co. v. System Federation No. 40, et al., 300 U. S., 515, the Engineers' Committee, as the duly designated representative of the craft of locomotive engineers on the Carrier's railroad, has the exclusive right of

representation of that craft in all matters pertaining to rules and working conditions governing the craft, including rules governing admission thereto and removal therefrom.

The provisions of Article 43, Sections 2, 3, 4 and 6 of the Firemen's Schedule, in providing for the return to service as engineers of men who had displaced firemen upon demotion from the craft of engineers, and in providing for the regulation of engineers' mileage, contain rules which purport to govern the engineers' craft. The Circuit Court of Appeals properly held that said sections should be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said sections are invalid in so far as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to the engineers' working lists. The Questions and Answers appended to Article 37, Section 15, of the Firemen's Schedule, concerning the calling of demoted engineers for service as emergency engineers, control the conditions under which such men may be employed as engineers, and the Circuit Court of Appeals properly held that such Questions and Answers are invalid in so far as they relate to the entry of such men into the craft of engineers. This decision accords with the decision in the Virginian R. Co. case, supra, gives effect to the right of exclusive craft representation, and does not infringe upon any rights of the firemen's craft to regulate its own craft matters.

The purpose and effect of \$1, Fifth, of the Act is to protect employees in their right of self-organization into crafts or classes. Since it is undisputed here that the two crafts of engineers and firemen have been and are recognized as crafts or classes of employees within the meaning of the Act, no question of self-organization of employees is involved, and \$1, Fifth, cannot properly be invoked to

prevent the court from defining the bargaining jurisdiction of the crafts.

The Circuit Court of Appeals correctly held that there is a line of cleavage between the erafts of engineers and firemen, and that the Railway Labor Act contemplates that such line of cleavage is at the point of imposing conditions of entry into the one craft or the other. It correctly applied this line of cleavage to Article 43, Sections 2, 3, 4 and 6, and the Questions and Answers appended to Article 37, Section 15; of the Firemen's Schedule.

The position of the Engineers in the instant case is in harmony with the foregoing declaration of craft rights. The Engineers seek only to regulate the rules and working conditions governing the engineers' craft, and do not attempt to prescribe the rules governing the firemen's craft. The claim of the Firemen, in the guise of establishing the conditions under which demoted engineers displace firemen, directly attempts to regulate the rules and working conditions of locomotive engineers, including the entry of firemen into the engineers' craft, the regulation of the mileage and, hence, earnings of engineers, and the number of engineers to be assigned to the engineers' working lists, and is an unjustified over-reaching of its rights of collective bargaining under the Railway Labor Act.

The action of the carrier in contracting with the Firemen's Committee for the rules above mentioned, was in violation of the Railway Labor Act in so far as said provisions purport or are intended to govern the engineers, craft.

In answer to the procedural questions propounded by the Court, it is our view, as stated in our brief in No. 27, that resort to the declaratory judgment procedure is appropriate here; the Federal law should be applied; and the Norris-LaGuardia Act does not negative the propriety of granting the relief sought.

ARGUMENT.

I

THE RIGHT OF CRAFT REPRESENTATION, AS TO ALL BULES AND WORKING CONDITIONS GOVERNING THE CRAFT, INCLUDING ADMISSION THERETO AND REMOVAL THEREFROM, IS EXCLUSIVE IN THE DESIGNATED CRAFT REPRESENTATIVE.

Section 2, Fourth, of the Railway Labor Act (45 U. S. C. § 152) provides that "Employees shall have the right to organize and bargain collectively through representatives of their own choosing," and that "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." Section 2, First and Ninth, of the Act imposes the obligation on a carrier to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to treat with the designated representative of the craft for the purposes of the Act. This duty to treat with the designated representative is a duty to treat exclusively with such representative.

In Virginian R. Co. v. System Federation No. 40, et al., 300 U. S. 515, 548, this Court, in construing the Railway Labor Act, held that the provisions of the Act giving to the employees the right to organize and to bargain collectively through the representative chosen by a majority of the craft gave an exclusive right to the craft representative so designated. The Act, said the court, imposed upon the carrier "the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other."

In further amplification of the negative duty the court approved and quoted from the brief of the Government filed in that case as follows:

"The Government interprets the negative obligations imposed by the statute and decree as having the following effect: When the majority of a craft or class has (either by secret ballot or otherwise) selected a representative, the carrier cannot make with anyone other than the representative a collective contract (i.e., a contract which sets rates of pay, rules, or working conditions), whether the contract covers the class as a whole or a part thereof.

If the majority of a craft or class has not selected a representative, the carrier is free to make with anyone it pleases and for any group it pleases contracts establishing rates of pay, rules, or working conditions." (Italics ours.)

There are admittedly two separate crafts or classes employed in engine service by the Carrier. There is the craft or class of locomotive engineers, which has been recognized by the Carrier as a separate craft or class of employees for all purposes of the Railway Labor Act (Finding 4(a), R. 45), and the Engineers' Committee is the sole designated representative of such craft or class (R. 45-6, Petitioner's Br. pp. 2, 21). There is a separate craft or class of locomotive firemen employed by the Carrier (Finding 4(a) R. 45), and the Firemen's Committee is the designated representative of such craft or class (Einding 4(a) R. 46). The Firemen's Committee is not, and never has been, the representative of said craft or class of locomotive engineers on the Carrier's railroad.

The holding in the Virginian R. Co. case above set out negatives any contention that there should or could be dual representation respecting the rules and working conditions of a particular craft. It expressly eliminates collective bargaining with a carrier by a minority interest within a craft, and no matter how great or how small the minority interest it has no voice in the making of collective contracts for the craft, or any part thereof.

Just as the holding in the Virginian R. Co. case eliminates collective bargaining for the craft by the representative of a minority within the craft so does it eliminate

representation concerning craft matters of a particular craft by the craft representative of another craft. Dual representation of any and all kinds is outlawed.

The Engineers' Committee contends that as the duly designated representative of said craft or class of locomotive engineers employed on the Carrier's railroad, and in accordance with the pronouncement of this Court in the Virginian R. Co. case, it has the exclusive right to negotiate with the Carrier, and the Carrier has the duty to negotiate exclusively with it, as to the rules and working conditions governing said craft or class of locomotive engineers employed on said railroad, including all the rules which pertain to and govern entry into, remaining in, or removal from said craft, or which pertain to service to be performed as locomotive engineers by the members of said craft.

· If a rule is one which governs service to be performed as an engineer, or the amount of work which may be performed by an engineer, or governs the number of persons who at a particular time may be permitted to work as engineers, or if it governs, employment in, admission to, or removal from, the craft of engineers, then such rule is exclusively, we submit, a matter for collective bargaining by the engineers' craft representative. The decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case, under the heading "B" therein (R. 815-826), gives effect to the exclusive right of collective bargaining by the craft representative as herein contended and as held by this Court in Virginian R. Co. case. It stated (R. 824) that the Railway Labor Act "contemplates that the cleavage of the powers of the firemen's and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other," and it held invalid rules of Article 43 of the Firemen's Schedule "in so far as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to

the engineers' working lists" (R. \$23). In accordance therewith, each of these crafts has the control of all matters at and beyond the point of entry into the craft and no representative of the other craft may cross the dividing line between the crafts for the purpose of collective bargaining with the Carrier. Such a construction of the Actresults in an understandable, clear-cut, workable rule, It recognizes the right of the representative of each craft to make all the rules governing its craft or the members thereof in every particular where the rules governing the craft as a craft are involved. Such construction is fair, just and equitable to each craft. No craft, nor the representative thereof, should desire or be permitted to contract concerning services to be performed in another craft, or to setthe terms of admission to or removal from such craft. Unless the designated representative of each craft shall have, the exclusive right to bargain with the carrier for the rules governing that craft, the designation of such a representative may well become little more than a perfunctory gesture. The right of craft representation is a valuable propertyright (Texas & N. O. R. Co. r. Brotherhood of Railway & Steamship Clerks, 281 U. S. 548, 571), and in enacting the provision for the designation of a craft representative by a majority of the craft in the 1934 amendments to the Railway Labor Act, Congress, we submit, did not intend that such designation should be of a perfunctory nature but intended that it should function vitally and exclusively, as held by this Court in the Virginian R. Co. case.

THE CECUIT COURT OF APPEALS DID NOT ERR IN HOLDING (1) THAT SECTIONS 2, 3, 4 AND 6 OF ARTICLE 43
OF THE FIREMEN'S AGREEMENT SHALL BE LIMITED
IN THEIR APPLICATION TO CONDITIONS UNDER
WHICH DEMOTED ENGINEERS ENTER, REMAIN IN,
AND LEAVE THE FIREMEN'S CRAFT, AND (2) THAT
SAID SECTIONS ARE INVALID IN SO FAR AS THEY
SEEK TO PRESCRIBE CONDITIONS OF RE-ENTRY
INTO THE ENGINEERS' CRAFT OR TO REGULATE THE
MILEAGE OF ENGINEERS OR THE NUMBER OF ENGINEERS TO BE ASSIGNED TO THE ENGINEERS' WORKING LISTS.

1. The decision of the Circuit Court of Appeals gives effect to the right of exclusive craft representation.

Article 43, Section 1, First and Second (R. 604, Petitioner's Brief, pp. 8, 9) is expressed in the language of condition and states the conditions under which demoted engineers may be returned to service as firemen. Since this section purports only to set up conditions for entry of demoted engineers into the firemen's craft, the Engineers' Committee did not press any objection thereto in either the District Court or the Circuit Court of Appeals. Sections 2, 3 and 4 of said Article are not expressed in the language of condition. As written, they appear to be independent of the conditions expressed in Section 1 and purport to regulate engineers' working lists and purport to set forth conditions of re-entry into the engineers' craft and independently to regulate the mileage which engineers working in the craft of engineers may make. Section 2 relates to hired engineers. Section 3 relates to the return of demoted engineers to service as engineers in the craft of engineers, and Section 4 purports to govern the terms and conditions for the regulation of the engineers' working lists including the amount of mileage which may be made by engineers. In the District Court, however, the Firemen's Committee and the Carrier took the position

that Sections 2, 3 and 4 were conditions under which demoted engineers might displace firemen and were to be considered "conditions" included in the phrase "under the following conditions" of Section 1. The District Court adopted this view of the Firemen's Committee and the Carrier, and in connection therewith made Finding of Fact 11(a) (R. 52) hereinbefore quoted. All of the provisions of Article 43, as well as the Addendum thereto, it was found,

"were and are intended to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is intended to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or minimum miles or hours." (R. 52.)

The same contention respecting Sections 2, 3 and 4 was made by the Carrier and the Firemen's Committee in the Circuit Court of Appeals, and that court ordered Finding 11(a) incorporated in the decree. In adopting this contention the Circuit Court of Appeals (R. 818) stated that Section 1 of Article 43 was to be interpreted as if the words "including Sections 2, 3, 4 and 6 below" were inserted after the words "under the following conditions" (R. 819). However, the Circuit Court of Appeals placed a definite limitation and interpretation upon the effect of these conditions. Said the court:

Engineers Brotherhood claims, namely, 'that Sections 2, 3, 4 and 6 of Article 43 of the Eiremen's Agreement shall be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said sections * ' are invalid in so far as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers.

neers to be assigned to engineers' working lists, whether in passenger, freight, or extra service." (R. 823.)

This interpretation is a direct application of the construction placed upon the Act by the Circuit Court of Appeals as follows:

"It is our opinion that the Act contemplates that the cleavage of the powers of the firemen's and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other." (R. 824.)

This construction and application of the Act are in full accord with the decision in the Virginian R. Co. case, supra. They recognize and give effect to the right of the Engineers' Committee to make all the rules governing the craft or the members thereof in every particular where the rules governing the craft as a craft are involved. They recognize and give effect to the right of the Engineers' Committee to negotiate exclusively for the rules which govern admission to the craft, remaining in the craft, and leaving the craft, as well as the regulation of the mileage of engineers. They likewise recognize the right of the Firemen's Committee to negotiate similarly concerning the firemen's craft.

The decision of the Circuit Court of Appeals does not interfere with any rights of the firemen's craft.

The Engineers' Committee denies any claim that the interpretation made by the Circuit Court of Appeals aforequoted, or that the contention of the Engineers' Committee, invades or infringes firemen's seniority rights or the exercise thereof, their "right" of promotion, or any other claimed "interest" of the firemen's craft. The contentions of the Engineers' Committee throughout this litigation are based upon the fact that there is a separate craft or class of locomotive engineers for which the Engineers' Commit-

tee is the accredited representative, and a separate craft or class of firemen for which the petitioner is the accredited representative. The necessary legal consequence, under the Railway Labor Act, of these conceded craft distinctions is that each craft representative has the exclusive right to make all of the rules governing its craft, notwithstanding such claims of another craft or its members.

(a) Neither the firemen's "right" of promotion nor their seniority rights as firemen are involved in the rules here in issue, and are no basis for the regulation of engineers' rules by the firemen.

So far as legal considerations are concerned, the crafts are entirely separate and independent. Legally speaking, the Carrier, in the absence of contract to the contrary, could hire all of its engineers from sources other than the craft of firemen on its railroad. So far as any statute or basic law is concerned, it would not be required to obtain its engineers from its craft of firemen. Conveniently it might do so, but legally it would not be required to do so. fact that it does obtain its engineers from its craft of firemen, whether as a result of agreement or otherwise, does not affect the separateness of the crafts. If the situation prevailed that engineers were obtained from sources other than the Carrier's craft of firemen, there would be no questioning of the sole right of the engineers' craft to do the things the Engineers' Committee is contending for in this lifigation. No one would then question the exclusive power and right of the Engineers' Committee, under the Railway Labor Act, to make with the Carrier all rules for the government of the craft. Obviously, the "economic interest" (discussed p. 21 post) of those seeking admission to the craft of engineer would be affected by the rules governing the craft, but just as obviously the desire of those not working in the craft of engineers, or the effect upon their economic interest in obtaining such employment, would not be factors affecting the exclusive legal right of the engineers' craft to determine its own rules. We submit that this exclusive right of the engineers' craft is in no wise affected by the fact that the Carrier obtains its engineers from the firemen employed on its own railroad. Irrespective of how the rules governing the engineers' craft may affect the members of the separate firemen's craft, whether in their personal desires or economic interests, the firemen's craft has no right to make such rules with the Carrier. The Engineers' exclusive right so to do is just as complete as if all engineers were hired from other railroads or were obtained from other sources than the Carrier's firemen employees.

Petitioner concedes (Brief p. 19) that when there is no promotion from one craft into another there could be no dispute over the right of a craft to contract concerning the seniority rights of its members, but contends that, since the sole open highway of promotion is from firing service into engineers' service, it is unreasonable to permit the engineers' craft to determine the conditions of promotion thereinto, and particularly so when the Firemen are granting to the engineers' craft the privilege of displacing senior firemen upon demotion from the engineers' craft (Brief p. There is no inherent or legal right to promotion. There is no promotion from machinists' craft, or electricians' craft, or boilermakers' craft into some other craft. Promotion of men working in those crafts is confined solely to whatever promotion there may be within their own craft as determined by their own craft rules. There is no promotion from the craft of engineers to some other craft. That the work which the firemen do enables them to qualify for work in the engineers' craft, or that their craft agreement requires them to qualify for promotion, does not carry with it any legal right to determine that they shall be advanced to employment as engineers and enter into the engineers' craft under rules and regulations of the firemen's craft, Concerning the "privilege" of demoted engineers displacing senior firemen, the granting or withholding thereof should be within the jurisdiction of the firemen's craft; but likewise the granting of the "privilege" of promotion into the engineers' craft and the "privilege" of exercising seniority rights therein should be the exclusive right of the engineers' craft. There is nothing indefensible or unreasonable in the contention of the Engineers for the right to regulate entry into their craft when at the same time they are willing to agree that the Firemen have the right to control the acceptance of demoted men into the firemen's craft. On the other hand, it is entirely unreasonable for the Firemen to contend, as they do here, that they have the right to control both demotion into the firemen's craft and entry or re-entry into the engineers' craft.

The Firemen contend at page 14 of their brief, that they have a right to contract regarding the promotion of men from firing service, whether demoted engineers or not; as a condition upon the exercise of the demotion privilege. (Italies ours.) It is said (Brief, p. 28) that in addition to the interests of the Firemen in requiring restoration of demoted engineers to engineers' service, the "Firemen have a profound interest in maintaining their seniority rights of promotion from firing service, whether these rights are exercised by demoted engineers or by firemen qualified for promotion." (Italics ours.) The argument following is directed to the contention that since the rules in the Firemen's Schedule require that firemen qualify themselves for promotion, qualified firemen are entitled to become engineers and that the seniority rights of a firemen entitle him to a job as an engineer. Thus it appears that what the firemen have been and are aiming at is to use the demotion rule as a device to provide not only for the return of demoted men to engineers' service but also for original promotion. The implication appears to be that Section + of Article 43 which, as written, is a complete set of engineers' mileage regulations, is to be construed not only

as one of "the following conditions" mentioned in Section 1 relating to the displacement of firemen by demoted engineers, but also as a guarantee of advancement of previously unpromoted firemen to promotion and work on the engineers' lists, and to require that firemen would have to be promoted and placed upon the engineers' working lists under these mileage regulations in the Firemen's Schedule. Thus, the Firemen would make and control the conditions of entry into the engineers' craft and the amount of engineers' mileage and earnings, as well as the conditions under which engineers may be demoted to firing.

Seniority rights of a fireman are not seniority rights to a job as an engineer. Firemen's seniority is one thing; engineers' seniority is another. Even Section 4 of Article 42 of the Firemen's Schedule (R. 600) quoted in part by petitioner (Brief, p. 29) to the effect that, after passing the required examination, promotion and seniority will date "from first service as engineer" does not purport to give any right to a job as engineer or to determine the time when first service as an engineer will occur. men's seniority is the result of the firemen's craft agreement with the Carrier and may properly relate only to the seniority of firemen within the craft and in the performance of their duties as firemen. Engineers' seniority is the result of the engineers' craft agreement with the Carrier, and may deal only with the seniority of engineers in the performance of services as engineers. The firemen's craft does not establish engineers' seniority. nor can the Firemen lawfully provide in their agreement with the Carrier any terms or conditions which govern engineers' seniority or the exercise thereof. All matters pertaining to the exercise of engineers' seniority-and these include entry into the craft, engineers' mileage rules, the regulation of the engineers' working lists, and the calling of engineers to emergency service-belong exclusively to the engineers' craft. Petitioner's assertion that the seniority rights of firemen entitle them to jobs as engineers is without basis, for the entry into the engineers' craft means performance of service as an engineer, and constitutes an exercise of engineers' seniority which must be, and legally is, controlled by the engineers' craft agreement.

The Engineers have contended, and the Circuit Court of Appeals upheld the contention, that while, in conditioning the demotion privilege, the Firemen may require the demoted engineers to leave firing service under specified conditions, they cannot require the men so removed from the firemen's craft to be returned to service in the engineers' craft. A fortiori, the Firemen cannot lawfully make an agreement with the Carrier providing that men who have qualified for promotion under Firemen's rules, but who have never worked as engineers, shall be employed as engineers and placed upon the engineers' working lists under mileage regulations of engineers agreed on between the Firemen and the Carrier. Only the Engineers' Committee and the Carrier may lawfully agree as to when additional employees shall be placed on the engineers' working lists. There is no infringement of firemen's seniority or of any so-called right of promotion involved in such a position. The Engineers are not attempting to prevent the Carrier from agreeing with the Firemen that qualified firemen shall be eligible for employment as engineers, when the services of additional engineers are needed. The Engineers do insist, however, that they, and they alone, under engineers' mileage regulations, have the right to agree with the Carrier as to when new engineers, from whatever source employed, are to be placed on the engineers' working lists.1

¹ Compare brief of the Government, p. 40. It is there said: "Our position as to the right of the Firemen to enter into agreements which grant engineers conditional rights as firemen would not permit the use of the condition as a method of controlling engineers' terms of employment which do not immediately affect the economic interest of the firemen."

The correctness of the holding of the Circuit Court of Appeals is emphasized by this contention of the Firemen concerning promotion of previously unpromoted firemen. One of the reasons why the Engineers made Article 43 a subject of attack in this case was that Section 4 thereof; as it is written, purports to be a complete set of engineers' mileage regulations and purports to control engineer employment. If it was sought, and apparently it was, by the provisions of Section 4 to provide a regulation by the Firemen of engineers' mileage after all demoted engineers had been returned to service as engineers, whether in connection with the promotion of firemen, or otherwise, then the interpretation placed upon the decree that such provisions are invalid in so far as they seek to regulate the mileage of engineers or the number of engineers to be assigned to the engineers' working lists, has effectively prevented such control of engineer employment by the Firemen. The Firemen should not be permitted to control the mileage or employment of the engineers' craft. An affirmance of the holding of the Circuit Court of Appeals will prevent them from doing so and will leave this control with the engineers' craft where it belongs.

(b) The economic or other interest of firemen in engineers' rules does not entitle them to negotiate or contract for engineers.

It is suggested in the brief for the United States amicus curiae (p. 36) that in addition to a future interest of firemen in becoming engineers they have an "economic interest," in the conditions of employment of engineers. This, it is suggested, results from the fact that the engineers' craft rules governing the amount of work to be performed by engineers, and thus the number of engineers to be employed on the engineers' working lists, has an effect on the promotion of firemen to engineers, and also from the fact that the higher the engineers' mileage regulations the more engineers will drop back to firing and more junior firemen will be let out of service. While

this economic interest of the Firemen in the conditions of employment for engineers, in the view of the Government (Brief, p. 38), does not appear sufficient to deprive the engineers of the exclusive right to bargain for their own working conditions, we desire to comment further thereon.

Bearing in mind that it is the position of the Engineers that they regulate entrance into the engineers' craft and that the Firemen regulate the matter of the entry of demoted engineers to firing service, it appears that such so-called "economic interest" is no more than a matter which may be taken into consideration by the firemen's craft representative in negotiating the rules for the government of that craft, including the conditions for admission thereinto when engineers are demoted from the engineers' working lists. We take it that any persons who desire to obtain employment in a particular craft have an "economic interest" in the conditions governing employment in that craft. For example, suppose an employer has 100 machinists in his employ working 9 hours a day and there are 50 unemployed machinists seeking work from this empleyer. If the 100 machinists were to work only 6 hours per day the employer would then be able to take on the additional 50 men seeking employment. We think in such case the 50 unemployed machinists have an "economic interest" in this employment. Yet this economic interest, even if it amount to a dire need, does not give these unemployed machinists any legal right to demand that the working hours of the employed machinists be reduced from 9 to 6. Let this situation be transferred to a similar one regarding the employment of machinists by a carrier governed by the Railway Labor Act. Let it be assumed that the carrier is employing 100 machinists at 9 hours a day. and that there are 50 machinists on that carrier's seniority roster of machinists who are furloughed from their employment and who would be taken back to work in their order of seniority if the machinists' craft representative and the

carrier would agree upon a 6 hour work day. Again, the 50 furloughed machinists have an economic interest in being returned to employment, but their interest is at most a minority interest, and regardless of the extent of such interest or their personal needs, they do not have any right to negotiate with the carrier concerning a change in the rules governing the maclinists' working day. So, they remain out of work unless and until the craft representative and the Carrier agree on a greater spread of the available work. Similarly, firemen who are furloughed from service as such because the rules agreed upon between the firemen's craft representative and the carrier do not spread the work sufficiently to enable them to return to work at a given time, have an economic interest in the rules governing the firemen's work which may be performed by firemen in a given period. But however much they may desire that a change in such rules be made, their interest is governed by the wishes of the majority, and their economic interest and economic need give them no right to bargain thereon. We think that the situation is the same in the case of engineers who have been demoted from the engi-'neers' craft and are working as firemen in the firemen's craft. They may desire individually or as a group to return to service in the engineers' craft, but neither such desire on the part of these individuals nor the desire of the firemen's craft to advance them to service in the engineers' craft confers upon the firemen's craft or its representative any legal right to interfere with the engineers' craft in its exclusive right to determine the rules under which such men may be returned to service as engineers. Neither personal interest, minority interest, nor economic interest is a criterion by which collective bargaining rights are determined under the Railway Labor Act. The only interest which is established by the Railway Labor Act as a criterion for the determination of the right of collective bargaining concerning a craft is the interest of the majority of the craft.

Petitioner refers (Brief pp. 21, 24) to what it calls an overlapping jurisdiction between the crafts. We submit. that the crafts of engineers and firemen and their respective jurisdictions do not overlap. Their functions are entirely different. A man working on a locomotive is either an engineer or a fireman. An engineer "runs" and a fireman "fires" a locomotive. The respective duties and responsibilities of the two crafts remain constant and are. and always have been, separate and distinct. sonnel of the craft may and does change as men move from the one craft to the other under the respective craft rules, in the application of the mileage regulations resulting from the fluctuation in business, or from other causes. Relative to the total number of men employed in the two crafts, an ebb and flow exists only in case of comparatively few men, that is, the youngest men in point of seniority on the engineers' working lists and the oldest men in point of seniority on the firemen's working lists. In any event, the movement or ebb and flow from one craft to the other does not affect the separateness of and the clear distinction between these established and recognized crafts.

The "line of cleavage" between the crafts has always existed. On the Southern Pacific Railroad engineers have

In petitioner's brief (p. 4) it is stated that in the movement of men from one craft to the other with fluctuations in traffic "there have been times when every fireman in service held a seniority date as engineer." Apparently this statement is in error. Finding 6 (R. 47-8), which is cited as the basis of the statement aforesaid. shows that on January 1, 1940, approximately one-fifth of the. firemen then working had been demoted from the engineers' works ing lists, and that on July 1, 1940, approximately one-seventh of the firemen employed had been demoted from the engineers' working lists. The establishment of a "seniority date" as engineer has little or no significance in this connection. Some of the demoted men back firing may have worked only one day as an engineer, which would have established their "seniority date." Others may have worked only a few days or for short periods' during seasonal or other temporary peaks of business of the demoted men probably should be termed firemen who have worked briefly as engineers, rather than demoted engineers.

at all times worked under engineers' separate craft agreements and firemen have worked under firemen's separate craft agreements (Plaintiff's Exhibit 7, R. 637-663). The separate jurisdiction of the two crafts has always been recognized by the Brotherhood of Locomotive Firemen and Enginemen, as well as by the Brotherhood of Locomotive Engineers. In the Chicago Joint Agreement, to which petitioner referred in its statement of the case (Brief 5), which was originally entered into between the two Brotherhoods in 1913 (R. 669), revised in 1918 (R. 684), and again in 1923 (R. 701), it was expressly recognized by the two Brotherhoods that each craft had its own jurisdiction and that each craft was to be represented in that jurisdiction by its own representative. Article 1 of that Agreement provides as follows:

"(a) We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committee of the Brotherhood of Locomotive Engineers; and, conversely, the right to make and interpret contracts, rules, rates and working agreements for locomotive firemen and hostlers, shall be vested in the Brotherhood of Locomotive Firemen and Enginemen; * * * " (R. 669, 684, 701.)

While thus specifically recognizing the separate jurisdictions of the two crafts, the two organizations also recognized that disputes would arise between the crafts, and the purpose of the agreement was to try to provide as means of settlement of such inter-craft disputes. This agreement was abrogated by the Brotherhood of Locomotive Engineers in 1927 (R. 201) because the purposes sought were not accomplished, but nowhere in the Chicago Joint Agreement is any statement to be found which would justify a claim that the crafts or their jurisdictions are, or ever have been, anything but separate and distinct.

Petitioner, of course, concedes that there are two separate crafts or classes of engineers and firemen (R. 25, Brief

21), but argues that there is a "subject matter of contract" in which the members of two crafts are interested, and further contends that the carrier could make the same contract with both organizations or could make a separate contract with either:covering a subject matter of common interest "so long as that contract did not infringe upon an exclusive jurisdiction of the other craft." We submit that there is no subject matter concerning rules or working conditions of the engineers' craft or admission thereinto or removal therefrom which is not within the exclusive jurisdiction of the engineers' craft, and that there can be no interest of firemen in the rules and working conditions which govern the admission to or removal from the craft of engineers or the performance of service as engineers which will diminish or modify the exclusive right of the engineers' craft to bargain for those rules or working conditions.

Petitioner also concedes that if the craft representative were seeking to make a contract regarding a subject matter in which the members of its craft had no interest or only a secondary interest (Brief p. 25) the court would be justified in holding that such contract was invalid if in conflict with an existing contract held by the craft which clearly had a direct and immediate interest in the subject matter. We assume it will not be questioned that the engineers have a direct and immediate interest in all of the rules which govern the engineers' craft. Certainly the interest of the engineers therein is primary and basic. No interest of men in another craft; whether arising from their desire to be promoted into the craft or from the fact that the normal and regular working of the engineers' rules affect their economic interest or otherwise, can be as primary, direct, and immediate as the interest of those employed in the craft. While it is denied that either the firemen's craft as a craft, or the individual members thereof, have any interest in engineers' rules which entitles the firemen's craft representhat whatever the interest the firemen may claim in engineers' rules, it must be secondary to the interests of the engineers' eraft. A secondary interest residing in another eraft is far removed from the primary interest of the majority of the craft which is the prerequisite interest for collective bargaining concerning the craft rules.

Petitioner further asserts (Brief p. 25) that a court would not be justified in holding that an organization has no right to make a contract concerning a subject matter in which its membership has a direct and vital interest, and further asserts the fact that another organization may have an interest in the same subject matter does not authorize the court to choose between the two to grant a jurisdiction to one and deny it to the other, particularly where the two organizations have similar contracts with the carrier. We assume that petitioner in using the words "organization" and "membership" refers to a craft organization or craft representative and craft membership. While it is not conceded but is denied that the Firemen have a direct or vital interest in the engineers' craft rules, we repeat that the criterion by which collective bargaining rights concerning a craft are determined is the interest of the majority of the craft. A minority within a craft has a present, direct, and vital interest in the craft and its rules. Yet it has no right to treat or bargain for the craft for any of the rules governing the craft or the service performed by minority members. Any right of the minority to contract was definitely eliminated by § 2, Fourth, of the Act. Certainly petitioner cannot successfully contend that any alleged interest of the Firemen or firemen's craft in engineers' craft rules is more direct or vital than the interest of the craft minority. Every rule made by the craft representative immediately and directly, and not secondarily, affects the earnings and working conditions of the minority members of a craft. Every engineers' rule

has a direct impact upon their economic interests. But regardless of interest and how the minority is affected, the minority has no voice in determining the rules of the craft. When Congress gave the exclusive right of craft representation to the majority representative it not only denied, we submit, to the minority the right to make the collective contracts governing the craft, but it also prohibited the representatives of all other crafts, no matter what their alleged interest, from contracting collectively concerning such craft.

Even if the Firemen's Committee enters into a confract with the Carrier concerning rules and working conditions of the engineers' craft in terms identical with those agreed upon between the Carrier and the Engineers' Committee (see Brief pp. 25, 26), it does not have the right to do so. Any contracting concerning a particular craft by anyone other than the true craft representative violates the exclusive right of the craft representative, no matter whether such contract relates to identical conditions or conflicting ones. In addition to the illegality involved, the inclusion of identical terms in different contracts by the different crafts would lead to many possible practical difficulties. Objections would be met if the craft representative desired to change the terms of its contract. There would be possibilities and probabilities of differences in interpretation of identical language. If it be proper for the Firemen toinclude rules governing the engineers' eraft in the Firemen's Schedule, the Firemen's interpretation of the rules. may be different from the interpretation of the identical rules by the engineers' representative. Further, as shown. in this case, engineers' rules with reference to the regulation of mileage for engineers include other rules not found. in: the Firemen's Schedule which bear upon the interpretation of the mileage regulation. For example, Article 32, Section 6, paragraph (h) of the Engineers' Schedule (Plaintiff's Exhibit 1, R. 438) provides that working lists in

the respective classes of service are to be handled separately, and paragraph (j) of Section 6 of Article 32 of the Engineers' Schedule (Plaintiff's Exhibit 1, R. 438) provides that the limitations with respect to the replacement of engineers shall not apply when the demoted engineers have been returned to service as engineers. Neither of these rules is found in the Firemen's Schedule. These objections are merely illustrative of practical reasons apart from authority why rules which regulate or purport to regulate engineers' mileage shall not be allowed in a schedule governing firemen.

(c) The Engineers' position is equitable.

In the peritioner's brief (p. 17) it is said that "the Firemen permit the demotion of engineers to firing service," hence they are concerned with the promotion of men from firing service and have a right to insist that firemen shall be promoted when engineers are running a sufficient mileage to provide reasonable employment for demoted engineers-reasonable employment, as we understand this contention, to be determined by the Firemen. It is also said (p. 18) that it seems plain that the Firemen can require that engineers snall only be demoted when there is insufficient work for all of them. It is then added "It should be equally plain that the Firemen have the right * * to require that such demoted engineers shall be promoted back to engineer service when there is sufficient employment for more engineers than are working"-"insufficient work" for engineers and "sufficient employment" for engineers again, as we understand, to be determined by the Firemen. It is also said (p. 19) that "a limitation" that entry into the engineers' craft shall be controlled by the engineers' craft, becomes "plainly indefensible when the firemen's craft at the same time is granting to the engineers' craft the privilege of demotion and the privilege of displacing senior firemen."

Each of these contentions is a non sequitur. If the 'Firemen "permit" or "grant" to demoted engineers the right to go back firing, by the same token the Engineers "permit" and "grant" to firemen the right of entry into the engineers' craft. If the Firemen permit and grant to demoted engineers the right of re-entry into the craft of firemen, they may properly limit the time within which such demoted men may remain therein. . By the same token the Engineers permit and grant to firemen entry and reentry into the craft of engineers upon conditions of their own making. Each craft has the right to make its own rules for the removal of men therefrom, but neither craft. has the right to say that upon the removal of a man from . its craft he shall be required to be accepted by the other . Thus, as illustrated with respect to Section 3, Article 43 of the Firemen's Schedule (R. 604) the Firemen exceeded their power and authority when they provided that "engineers taken off under this rule (i.e., Article 43, Section 1) shall be returned to service as engineers. etc." If this rule had been stated so as to express the full limit of petitioner's authority as the representative of the firemen's craft it would have been substantially as follows: "Engineers taken off under this rule shall be required to leave service as firemen, etc." The effect of the holding of the Circuit Court of Appeals on Article 43, Section 3, is to limit it in the manner suggested. It leaves the Firemen with full authority to determine the conditions under which demoted men may enter the firemen's craft and how long they may remain therein. It leaves for agreement between the Engineers and the Carrier the conditions under which , such men who were removed from the engineers' working lists by operation of the engineers' mileage rules shall be permitted to return to the engineers' working lists.

The Engineers' contention, as upheld by the Circuit Court of Appeals, is one of correlative rights for the two crafts, that is, the engineers have the exclusive bargaining

rights as to their craft and the firemen have the exclusive bargaining rights as to their craft. If such contention is not sustained, then the bargaining rights of the crafts and their representatives are not exclusive, and the engineers' craft and its representative have the same rights to contract collectively concerning firemen's rules and working conditions as the firemen's craft or its representative may have concerning engineers' rules and working conditions. We believe such dual representation is impractical, unworkable, and contrary to the right of craft representation by the representative chosen by the craft majority, as provided in Section 2, Fourth, of the Railway Labor Act.

. The position of the engineers' craft is equitable. gives to each craft complete control of its own craft mat-· ters and rules without interference from the other. Under it there could be no regulation by Engineers of the firemen's craft including the conditions of entry thereinto, and there could be no abuse of the demotion privilege, as to which petitioner professes fear (Brief pp. 5, 16), since the Firemen would have the right to control the conditions of entry, remaining in, and removal from the firemen's craft. Similarly, there could be no regulation of the engineers' craft by the Firemen including conditions of entry thereinto. Each craft would know the extent of its bargaining powers and the Carrier would know with which craft it was required to treat in particular matters. collective bargaining for a craft, with the craft interests presented and urged by the representative chosen by a majority of the craft instead of by the representative chosen by a rival craft, would be facilitated.

We deem it proper to comment briefly upon certain groundless statements made by petitioner, lest by failure to do so acquiescence therein be inferred. Petitioner has ascribed an "ulterior" purpose to the Engineers because they wish to control the conditions under which demoted, engineers will be returned to service in the engineers'

craft (Brief p. 20). It further says that in effect what the Engineers wish to do is to restore demoted engineers, who were demoted in order of seniority, to service as engineers in the order that the Engineers determine, and in connection with the latter statement says that the sole purpose of such an unreasonable claim is to give the engineers' Brotherhood'such a control over promotions that they can compel any man having a seniority date as an engineer to join their organization in order to get fair treatment (Brief p. 18). Such charges are entirely gratuitous. and unsupportable in fact; indeed, no effort is made to sup-The Engineers' Schedule (R. 436) requires that demoted engineers be returned to service in the order of their seniority. The Engineers' Committee, no less than the Firemen's Committee, jealously guards craft rights, including seniority.

Even if these baseless charges were true, they would be wholly irrelevant. We have no doubt that both of the national Brotherhoods, whose General Committees on the . Southern Pacific are involved in this case, are zealous, and properly so, for the rights of their members; and that the two General Committees are each zealous in their efforts to protect the rights of the respective crafts which they represent. But the issues here do not concern the welfare of national labor organizations. They are concerned with the rights of craft representation as established by law. We conceive it to be the duty of a representative chosen by a majority of a craft to take all proper steps to protect the interests of that craft when its preserves are being poached upon by another craft. The Engineers' Committee has invoked judicial proceedings for the purpose of having its case determined in orderly and lawful manner. The Circuit Court of Appeals reached a decision in which it was determined that there was merit in the Engineers' claims. Its decision was based upon legal considerations. The matter is before this Court for further review, and decision

will be made upon the basis of applicable law. Apparently petitioner's aspersions are an effort to surround the Firemen's desire for overreaching with a cloak of undeserved righteousness.

3. To permit the firemen's craft to negotiate rules governing the engineers' craft, including admission or re-entry thereinto, will invade the exclusive right of representation of the engineers' craft.

In the brief of the United States amicus curiae herein, at p. 39 it is said:

"The Firemen, however, have the right to bargain with respect to the terms upon which men may enter or remain in firing service. The Firemen and the varier are not required to permit the demoted engineers to return to firing. If they decide to grant the engineers that privilege, we do not think that the Act forbids them to protect the interests of the other firemen by appropriately conditioning its exercise."

A similar statement could with equal propriety be made concerning engineers: if engineers, permit firemen, either demoted men or newly promoted men, the privilege of entering engineers' service they may protect the interests of other engineers by appropriately conditioning its exercise.

It is the contention of the Engineers, and in accord with the interpretation and holding of the Circuit Court of Appeals, that the Firemen could not "appropriately" condition the return of engineers to firing service by including among the conditions one which required the return of such demoted engineers to service as engineers under specified conditions; but that in conditioning the exercise of the return to firing service the Firemen may make only conditions governing service in the firemen's craft, the entry thereinto and removal therefrom; and that similarly only the Engineers may condition the acceptance or pro-

motion into the engineers' craft in respect to the services to be performed in that craft or entry thereinto or removal therefrom.

In saving (Brief, p. 39) that the firemen are bargaining with respect to firemen's working conditions when they require that demoted engineers who are permitted to return to firing service must be returned to service as engineers under specified conditions, the Government has gone one step beyond the permissible bargaining area of the firemen's craft. As long as the Firemen confine the conditioning of the exercise of the demotion privilege to conditions under which demoted men enter, remain in, and leave the firemen's craft, as held by the Circuit Court of Appeals, they are bargaining concerning firemen's working conditions, but when they seek to require that men whom they have removed from the firemen's list shall at once re-enter the engineers' craft, they are no longer bargaining for firemen's working conditions but for engineers' work-. ing conditions.

It seems to us that the Government admits the incorrectness of its position when it says (Brief p. 39) that the Firemen could not directly seek to prescribe the order in which men should be called to work as engineers, but at the same time says they may do so if it is made a condition under which they accept service as firemen, and when it also says (Brief p. 40):

"We recognize, of course, that if the Firemen may condition the right of engineers to work as firemen in such a way as to protect their own economic interests, the practical effect may be substantially the same as if their jurisdiction overlapped that of the Engineers."

We submit that neither under the guise of conditioning re-entry into the firemen's craft, nor otherwise, may the Firemen lawfully determine conditions of entry or reentry into the engineers' craft, or in any way limit the mileage to be made by engineers. They should not be permitted to do indirectly what the law prohibits them from doing directly. The use of the indirect method which the Government indicates could be done, it says (Brief p. 40), results from the fact that the Engineers and the carrier

"choose not to abandon the system whereby an engineer preserves his valuable firemen's seniority and the right to re-enter the firemen's craft at the top whenever the engineers' working force is reduced. The engineers could escape from any conditions imposed by the Firemen by giving up that right, which is derived from the Firemen's agreement. But as long as they retain it, they subject themselves to the necessity of harmonizing their views with those of the firemen on matters which are of concern to both crafts."

This apparently refers to Article 32, Section 6(a) of the Engineers' Schedule (Plaintiff's Exhibit 1, R. 435) which provision is similar to a part of the provision in the Firemen's Schedule found in Article 43, Section 1 (R. 604). A similar position is taken by petitioner (Brief p. 26) where it is said that the Engineers have a contract "which grants to their members the demotion privilege" and therefore "have neither moral nor legal basis for urging the railroad to abrogate its contract by which the Firemen grant and impose conditions upon the demotion privilege." (See other references to the same matter, Petitioner's Brief, pp. 6, 7, 27-8). Section 6(a) of Article 32 was incorporated therein prior to the 1934 amendment of the Railway Labor Act. Prior to the 1934 amendment there was no legal requirement that the carrier should treat and bargain only with a recognized craft representative concerning the rulesgoverning the craft, and no legal barrier to either craft representative making agreements with the carrier which admittedly transgressed in the field of the other craft. But any and all provisions in either the Engineers or the Firemen's Schedules at the time the 1934 amendments became.

effective which conflict with such amendments must yield. thereto. (Brotherhood of Railway Shopcrafts v. Lowden, 86 F. 2d 458, 461; certiorari denied 300 U.S. 659). There had been no revision of the Engineers' Schedule subsequent to the 1934 amendments of the Railway Labor Act. But irrespective of provisions which may be found in either Schedule concerning the other craft, it has been the position of the Engineers' Committee in this litigation, from its inception, that under the provisions of § 2. Fourth, of the Railway Labor Act, as construed in the Virginian R. Co. case, supra, each craft has the exclusive right to contract with the carrier for all of the rules governing its craft, including entry thereinto and removal therefrom. perfectly clear, therefore, that the presence of the rule in the Engineers' Schedule regarding the re-entry of demoted engineers into the firemen's craft does not put the Engineers in an inconsistent position concerning its contention that it has the exclusive right to bargain for the conditions of entry or re-entry into the engineers' craft. It may be added that quite probably the Firemen may not be too insistent upon their argument in this matter, for their position, elsewhere taken in the brief (e.g., p. 22), is, categorically, that "the Engineers certainly could not make a contract to provide that engineers could be demoted to firing service and displace senior firemen from their jobs."

The Government's position that the Firemen are entitled to provide, as a condition of accepting demoted engineers into their craft, that such men should return to service as engineers under conditions stated by the Firemen, because such conditions are necessary to protect the economic interests of firemen, goes too far. Obviously, it is sufficient for the protection of the firemen's interests to provide for the conditions under which such men leave the firemen's craft. When they thus leave, these men no longer affect the regulation of the firemen's lists or the fortunes

of men belonging to the firemen's craft. Whether after leaving the firemen's craft such men return to work in the engineers' craft is for the determination by that craft. Similarly, the engineers' craft should determine the conditions under which engineers leave that craft; and whether, after being removed from the craft of engineers, such men return to work as firemen should be for determination by the firemen's craft.

As to whether a rule limiting the exercise of craft jurisdiction to the conditions under which men enter or leave the craft service would be impractical, as in the situation just mentioned, it may be noted that the Addendum to Article 43, which is concerned with "part time" men, i.e., men who are involved in the ebb and flow between the crafts, and work part of the time in one craft and part of the time in the other, illustrates the practical working of the situation wherein the mileage of the two crafts are different. Under the rules in the Addendum a part time man might be demoted from the engineers working list on account of a reduction in business, although he had not made the maximum amount of mileage permitted by the engineers' rule. If under the Firemen's rule he had already made the equivalent of the firemen's maximum he would not be permitted to work as a fireman for the balance of the month, and, unless there would be some condition which would cause him to return to the engineers' list, would be out of a job for that period. It is apparent that no difficulty is encountered in the operation of the working rules in this regard.

In the brief of the Government (p. 41) it is further said that uniformity of provisions in the Engineers' and Firemen's Schedules concerning the movement of men from one craft to the other is desirable; that if the two crafts are unable to agree, the Carrier may contract with the two organizations concerning different provisions to the extent it deems them workable. It is then suggested that if no such agreement can be reached, or if the Carrier is unwilling to enter into agreements with the two organizations containing different provisions concerning re-entrance of engineers into firing service, the Carrier could enter into a valid agreement with one (craft) and prescribe conditions for the other craft as in any case where an employer and the bargaining representative are unable to agree. We submit that under no circumstances can the Carrier enter into an agreement with the representative of one craft prescribing conditions for another craft which has its own representative.

This suggestion appears to be in direct conflict with the decision in the Virginian R. Co. case, supra, and with the position stated by the Government in its brief in that case, quoted by the Court at p. 548. The position there taken by the Government was that if a craft does not have a duly designated majority representative then the carrier may make such agreements as it will, and with whom it can, governing such craft. But if the craft has a duly designated representative the carrier "cannot make with anyone other than the representative a collective contract (i.e., a contract which sets rates of pay, rules and working conditions) whether the contract covers the class as a whole or a part thereof." We submit that the position of the Government as stated in its brief in the Virginian R. Co. case is the correct one. The fact that a carrier may not be able to make an agreement satisfactory to itself with the duly designated craft representative does not permit it to make an agreement with someone other than the craft representative. To do so, we believe, would defeat the purposes of the Act. It would encourage carriers to play one organization against another to obtain the best terms for the carrier to the detriment of all employees concerned. If a carrier is permitted under the Act to shop

around in such a manner there would have been no reason for the prohibition against dealing with the minority interest within the craft. We do not think that Congress intended to permit any kind of shopping around. The procedure suggested by the Government would provide for dual representation which, as hereinbefore shown, was eliminated from railroad labor relations by the 1934 amendments to the Railway Labor Act.

4. Section 1, Fifth, of the Act does not prevent the court from defining the bargaining jurisdiction of craft representatives. It relates only to the "self-organization" of employees, and has no application here.

At pp. 23-6 of its brief, petitioner points to § 1, Fifth, of the Act¹ as prohibiting the court from drawing a line of demarcation between the bargaining jurisdictions of the two crafts. The clause " * * nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission," it is claimed, deprives the court of the right to construe the Act so as to define and limit the area within which the respective craft representatives may function.

Section 1, Fifth, provides: "The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: Provided, however. That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission. ".

This contention evidently is advanced with questionable confidence in its soundness. At page 25 counsel say that if an organization were seeking to make a contract regarding a subject in which the members of its craft had no interest or only a secondary interest, the court would be justified in holding that such contract was invalid if in conflict with an existing contract held by an organization representing the craft which had a direct and immediate interest in the subject. This admission, we point out, concedes the propriety of the court's limiting the bargaining jurisdiction of a craft, at least under such circumstances, notwithstanding the supposed effect of \$1, Fifth. As developed at pp. 21-28 ante, it is our position that the firemen's craft has no interest, secondary or otherwise, which entitles its representative to negotiate or contract for rules governing engineers.

When the Act is construed as a whole, it will be seen that § 1, Fifth, has no such emasculating effect as that claimed by petitioner. The language of \$1, Fifth, upon which petitioner relies is to be construed in the light of the-1934 amendments. The fact, referred to at page 24 of petitioner's brief, that § 1. Fifth, was re-enacted in 1934 without change does not aid petitioner's argument. There was no prior administrative or judicial construction of \$1; Fifth, which may be presumed to have been adopted by Congress in the 1934 amendments as a particular interpretation, and consequently this section should be given a construction in harmony with the amendments. case of disharmony between the new provisions and those reenacted in the course of amendment, the new provisions prevail as the latest declaration of the legislative will. I Sutherland on Statutory Construction (3rd Ed., 1943) p. 430.

Reading § 1, Fifth, along with the amendments of § 2, Fourth and Ninth, it is evident that if § 1, Fifth, is given the construction sought by petitioner, this section will con-

fliet with § 2, Fourth and Ninth, as construed by this Court. Under petitioner's contention, § 1, Fifth, would be construed to confer upon the representative of one craft the right to negotiate with a carrier concerning the rules and working conditions of another craft, and thereby to require or permit the carrier to deal with two representatives regarding the latter's rules, in conflict with the holding in the Virginian R. Co. case (300 U. S. at pp. 548-9) that a carrier can negotiate a labor contract applicable to a given craft only with the representative designated by that craft.

It was clearly not the intent of Congress in passing the 1934 amendments to permit such dual or multiple representation. While it may be that prior to 1934, because of the absence of majority craft rule, any group of employees had free and unrestricted "jurisdiction" or "powers" to negotiate, such rights were taken away by the 1934 amendments, and new rights were given to crafts of employees (\$2, Fourth and Ninth) and new obligations were imposed upon carriers (\$2, Ninth). Dual representation was rejected and abolished. If, therefore, \$1, Fifth, be construed as having contemplated unlimited or multiple representation in the setting of the 1926 Act, it seems clear that such a construction is no longer permissible in view of the new and specific provisions for exclusive craft representation and bargaining.

But it is unnecessary and, indeed, erroneous to give § 1. Fifth, the meaning and effect attributed to it by petitioner. Its true construction renders it harmonious with the Act as a whole and does not conflict with § 2. Fourth and Ninth. The proviso in § 1. Fifth, was inserted in the 1926 Act in aid of the purpose of establishing the right of

The proviso appears to have been included in the 1926 Act to safeguard the right of employee self-organization in two respects. First, it had been felt by some persons that the provision of § 1. Fifth, respecting the use of the occupational classifications of the

⁽Continued on next page) .

employees to organize into organizations of their own choosing. Thus 1 Fifth, finds application in the organization of many erafts or classes of employees in a form other than that referred to in the occupational classifications of the Interstate Commerce Commission. For example, mechanical employees, consisting of men employed in the crafts of machinists, boilermakers, blacksmiths, sheet metal workers, etc., have organized into a federation, and ·bargain and contract collectively through such federation, as shown in the Virginian R. Co. case. Clerical and station employees sometimes have grouped themselves in separate crafts, and at other times have organized as one craft, depending upon circumstances. Cf. Brotherhood of Ry. & S. S. Clerks v. Nashville & St. L. R. Co., 94 F. 2d 97. Some employees on some roads have organized into socalled independent organizations. In short by § 1, Fifth, Congress left the employees untrammeled in the organization of such crafts or classes as they might desire and with

(Continued from preceding page)

Interstate Commerce Commission in defining "employee" might be used as a means of deciding jurisdictional disputes. For example, if a clerk had been classified in a certain way by the Commission it might be contended that such classification would determine the craft to which he belonged. Second, in the provisions of the Howell-Barkley bill of 1924 setting up adjustment boards, employees classified within certain designated crafts or occupations were referred to specified boards, e.g., engineers, firemen and hostlers, conductors, trainmen, etc., were referred to Board No. 1. whose labor members were selected from nominations made by the nationally organized crafts. It had been claimed that these provisions solidified the definitions or classifications there made, and were intended to favor the national organizations and make permanent the organization of employees in the form thus indicated. It was the purpose of the proviso to meet these-objections. See explanation given to the House Committee by Mr. Donald R. Richberg, a codraftsman of the bill. Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 7180; 69th Cong. 1st Sess. pp. 64-5.

² Switchmen's Union v. National Mediation Board, 135 F. 2d 785, 801 (dissenting opinion).

whatever internal structure or form might be designated by them. But $\S 1$, Fifth, is not directed to the extent or manner of the *bargaining* which may be carried on by such employee organizations after they have been duly formed. That is the subject of $\S 2$.

In the case at bar no question is presented as to the self-organization of the engineer and firemen employees. The trial court found (Finding 4 (a), R. 45) that the two crafts of locomotive engineers and locomotive firemen have been and are now recognized as crafts or classes of employees within the meaning of the Act. We submit that there is therefore no occasion for the application of § 1, Fifth, here.

At p. 24 of its brief, petitioner confuses the situation by reference to a type of jurisdictional dispute which is different from that involved here. Reference is made to jurisdictional disputes among such organizations as machinists, electrical workers, boiler makers or sheet metal workers over what work comes within the respective craft jurisdictions. Similar reference is made to jurisdictional controversies between telegraphers, clerks and dispatchers, presumably of the same character. This is the type of dispute commonly known to the public as a "jurisdictional dispute," i.e., where one craft competes with another for the right to perform a certain kind of work, as in the typical case of carpenters and metal workers competing to get the job of installing metal window trim.

Whether the Railway Labor Act furnishes any basis for the adjudication of such disputes may be left open here. In the case at bar, there is no dispute as to which craft is entitled to perform the work of running or firing a locomotive. The dispute in the instant case is over an entirely different matter, viz., the bargaining jurisdiction of the craft representatives. We think that petitioner's contention that the court cannot decide a controversy over he bargaining jurisdiction of two separate crafts because there

is no express provision in the Act expressly giving the court authority so to do, is unsound. Such authority, as we have pointed out, is implied in the necessity of determining craft boundaries in the enforcement of the right conferred by § 2, Fourth, upon the majority representative of each craft exclusively to negotiate the collective agreement governing the craft it represents, and the corresponding duty imposed by § 2, Ninth, upon the carrier to treat with no other representative on the subject.

III.

THE CIRCUIT COURT OF APPEALS DID NOT ERR IN HOLD-ING THAT THE CLEAVAGE OF THE POWERS OF THE FIREMEN AND ENGINEERS CRAFTS TO AGREE WITH THE EMPLOYER IS AT THE POINT OF IMPOSING CON-DITIONS OF ENTRY INTO THE ONE CRAFT OR THE OTHER.

It has been hereinbefore demonstrated that the crafts of locomotive engineers and firemen are separate and distinct; and have always been so; that regardless of the fact that some men may be employed part of the time in one craft and part of the time in another craft, the separateness and distinctiveness of the two crafts are not affected by this change of personnel, and that the jurisdiction of. each craft to make the rules and regulations governing the craft is not and should not be affected by so-called interests of the other craft or its members. The Railway Labor Act contemplates collective bargaining by a craft, or class through a representative designated by a majority of the craft or class, and since the locomotive engineers on the Carrier's railroad concededly constitute one eraft or class, and the locomotive firemen employed on Carrier's railroad constitute a different craft or class, it would seem to be self-evident that each craft would have the sole bargaining rights concerning the rules and regulations which govern that craft. The holding of the Circuit Court of Appeals recognizes and gives effect to the obvious and

conceded fact that the crafts are separate. It denies and eliminates the specious claim of overlapping of the crafts or of their bargaining jurisdictions, and eliminates the impractical, unworkable, and unfair doctrine of dual craft This recognition of the separateness of representation. the two crafts at the natural point of separation, namely, the entry into the one craft or the other, results in an understandable and workable rule under which each craft representative knows the extent of its graft lines as to which it has the exclusive right of representation: It will put an end to the obvious desire of the firemen's craft representative to overreach into the engineers' craft for the illegal purpose of bargaining collectively for a craft of which it is not, and never has been, the designated representative. At the same time if recognizes and gives effect to the full measure of authority which the firemen's eraft has in the government of its own craft.

In ordering the decree amended so as to provide that the Questions and Answers of Article 37, Section 15 are a. valid exercise of the Firemen's bargaining power only in so far as said Questions and Answers relate to the rights of firemen as such, and that they are invalid in so far as they relate to the entry of a fireman into the craft of engineers (R. 826), the court was giving the same effect to the obvious line of cleavage between the crafts with respect to the calling of emergency engineers that it gave in its interpretation of the amendments to the decree concerning Article 43, Sections 2, 3, 4 and 6 (R. 823). There is an engineers' rule governing the matter of calling of engineers for emergency service (Plaintiff's Exhibit 10, R. 303-6). It provides that when it is necessary to call a demoted or hired engineer for emergency service the senior available engineer will be used, and further provides that his availability so far as his earned mileage is concerned will be determined under engineers' rules. While it thus appears that there is abundant room for conflict between

the two rules over the "availability" of the engineers to be called, with the consequent effect that the man who would be called under the Firemen's rule might not be the man who would be called under the Engineers' rule, the objection of the Engineers to these Questions and Answers was not merely that the rules do so conflict, but was also the more, fundamental objection that the Firemen have endeavored thereby to regulate entry into the craft by the exercise of engineers' seniority.

There is no disagreement over the fact that the Questions and Answers relate to the calling for "service as an engineer." The Firemen contend, however, that the purpose of the Questions and Answers is to prevent the railroad from evading the provisions of the rule set forth in Article 37. Section 15. and to prevent the railroad from avoiding the payment of guaranteed mileage (Brief in support of cross petition for writ of certiorari, p. 20). To the extent that the Questions and Answers preserve the integrity of Section 15, the decree gives full effect thereto, for it provides that the Questions and Answers are valid "in so far as they relate to the rights of firemen as such." But to the extent that the Questions and Answers seek to regulate the entrance of a demoted man into the engineers' craft they are beyond the lawful area of the Firemen's right of bargaining. Hence, the propriety of the decree in declaring that the Questions and Answers are invalid "in so far as they relate to entry of a fireman into the craft of engineers." There is nothing ambiguous or confusing, as claimed by petitioner (Brief p. 33), about this amendment of the decree by the Circuit Court of Appeals. We submit that instead of the court's decision creating ambiguity and confusion it has distinctly elarified the issues in respect to its recognition of the line of cleavage between the crafts and the application thereof to the various rules of the Firemen's Schedule. In the light of this decision each craft knows definitely the extent of its powers and rights in bargaining collectively with the carrier.

DISCUSSION OF QUESTIONS PROPOUNDED BY THE COURT.

Our brief as petitioner in No. 27 contains a discussion of the questions propounded by the Court. Since that discussion is generally applicable to the issues here, we adopt it without repetition in this brief. Particular questions raised in the instant case and certain statements contained in petitioner's argument herein, however, appear to warrant the following supplemental discussion of the first two questions.

1. Whether resort to the declaratory judgment procedure is appropriate in the circumstances.

Petitioner's discussion of this question (Brief pp. 34-40) includes argument both as to the representation of grievances issue presented in No. 27 and the question of the mileage and other rules involved herein. We are in agreement, of course, with petitioner's conclusion that resort to the declaratory judgment procedure is appropriate in the instant case. Upon the question of whether there is a statutory procedure provided in the Railway Labor Act which would preclude the bringing of a suit for declaratory judgment here, referred to by petitioner (pp. 36-8), we add an additional comment. To hold it necessary that the mediation and Emergency Board provisions of the Railway Labor Act must be exhausted before suit for a declaratory judgment may be brought, or that the decision of an Emergency Board would preclude the bringing of such an action, we think, would be unwise policy. In the instant case, the schedule rules in question were agreed to by the Carrier and Firemen's Committee and announced as an accomplished compact. The Engineers thereafter might have invoked mediation under the threat of a strike and caused the appointment of an Emergency Board. But such a remedy is a war-like one, and has potentialities of

disaster which ought to be avoided, if possible. The authorization of a strike in itself seriously affects the normal operations of a carrier. Of course, as recognized by petitioner, an Emergency Board action does not have the salutary effect of a judicial decision. Indeed, the statutory function of such Board is simply to "investigate promptly the facts as to the dispute and make a report thereon to the President" (§10). It thus has no authority to make any decision and its recommendations and opinions, if any, are binding on no one. Neither Emergency Board action nor mediation satisfies the necessity for decision in a case like the present one. Since resort to mediation and Emergency Boards is at most an optional remedy in the settlement of railway labor disputes (cf. Moore v. Illinois C. R. Co., 312 U. S. 630), we believe that the action of the Engineers in seeking the peaceful remedy of adjudication of their bargaining rights by the court is the preferable course of conduct. A declaratory judgment, said the Senate Committee in its report upon the Declaratory Judgment's bill,1 "declares conclusively and finally the rights of parties inlitigations over a contested issue, a form of relief which often suffices to settle controversies and full administer justice." We believe that these functions will be served by the entry of a declaration in the case at bar.

2. Whether any questions of the construction of the contracts involved are governed by state or by Federal law.

The decree of the Circuit Court of Appeals in the instant case differs somewhat in form from that of the Fifth Circuit in No. 23, the *M.K.T.* case. In the latter case, the court's declaration went directly to the question of the validity or invalidity of the agreement. Here the declaration determines the validity of the agreement, but does so

Senate Report No. 1005, 73rd Cong., 2d Sess., p. 2.

after making what may be considered to be an interpretation of the agreement, i.e., the firemen's mileage provisions were declared to be invalid in so far as they seek to prescribe conditions of re-entry into the Engineers' craft, etc. and were limited in their application to the conditions under which demoted engineers enter, remain in and leave the Firemen's craft, and the questions and answers were held. to be valid only in so far as they relate to the rights of firemen as such and were held invalid in so far as they relate to the entry of a firemen into the craft of engineers. In substance and effect, the making of this interpretation of the agreement was simply a step in the process of the declaration of its validity or invalidity, and was incidental to the decision of the fundamental question in the case, namely, the validity of those provisions under the Railway Labor Act.

Since the validity of the contract is challenged on the ground that a Federal statute incapacitates the parties from making it, the effect of the contract and the extent of its obligation become Federal questions, and finality cannot be accorded the views of a state court. Cf. Awotin v. Atlas Exchange Bank, 295 U. S. 209; Irving Trust Co. v. Day, 314 U. S. 556, 561; Standard Oil Co. v. Johnson, 316 U.S. 481, 483. The ultimate decision in this case concerning the validity of the contract provisions in question is so thoroughly bound up in the Railway Labor Act that the legal relations/which the Act affects "must be deemed governed by federal law having its source" in the Railway Labor Act "rather than by local law." Sola Elec. Co. v. Jefferson Elec. Co., 317 U. S. 173, 176. Under such circumstances it would be both inappropriate and inexpedient for federal courts to search out and apply decisions of state courts with the unsatisfactory possibility as pointed out in our discussion of this point in No. 27, that conflicting decisions from different states might gover othe same collective bargaining agreement.

CONCLUSION.

o In enacting § 2 of the Railway Labor Act, Congress decided and declared that the purposes of the Act will best be accomplished by exclusive craft bargaining through a craft representative chosen by the majority thereof. In bargaining under the Act, such representative has the exclusive right to negotiate the collective bargaining agreement applicable to the craft it represents, and a carrier is prohibited from bargaining respecting such agreement with the representative of any other craft. The application of the line of cleavage made by the Circuit Court of Appeals herein conforms to and implements the law as thus stated, accords to each party its full rights under the Act, and protects the public interest by facilitating orderly collective bargaining in railroad disputes.

The judgment of the Circuit Court of Appeals with respect to Article 43 of the Firemen's Schedule, as interpreted in the court's opinion, viz., that "Sections 2, 3, 4 and 6 of Article 43 of the Firemen's Agreement shall be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said Sections are invalid in so far as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to engineers' working lists, whether in passenger, freight, or extra service," and with respect to the Questions and Answers appended to Article 37, Section 15, should be affirmed.

Respectfully submitted,

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APPENDIX -A.

The Railway Labor Act, as amended (Act of May 20, 1926, c. 347, 44 Stat. 577, Act of June 21, 1934, c. 691, 48 Stat. 1185, Act of Aug. 13, 1940, c. 664 §§ 2, 3, 54 Stat. 785; U. S. C., Tit. 45, §§ 151-163).

(Sections 3 and 7-11, omitted.)

DEFINITIONS

Section 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such a railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason. of its being engaged in the mining of coal, the supplying

of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory, and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes. every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders' amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

The term "employee" shall not include any individual, while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the inine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. 'The term "district court" includes the Supreme Court of the District of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act."

GENERAL PURPOSES

SEC. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions,

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organiza-

tion of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier, in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to

such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

Eighth. Every earrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invoca-

tion of its services, the name or names of the individuals . or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the In the conduct of any election for the purposes, herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. The willful failure or refusal of any earrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than \$1,000 nor more than \$20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier; officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom

any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service without his consent.

NATIONAL MEDIATION BOARD

Sec. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed: There is hereby established, as an independent agency in the executive branch of the Government, a board to be: known as the "National Mediation Board," to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office for all successors shall expire three

vears after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of \$10,000 per annum, together with necessary traveling expenses and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

All cases referred to the Board of Mediation and unsettled on the date of the a proval of this Act shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1923, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at an time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, and [sic]

such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. All officers and employees of the Board of Mediation (except the members thereof; whose officers are thereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

FUNCTIONS OF MEDIATION BOARD

- Sec. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:
 - (a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.
 - (b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put it self in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them

to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing on both sides give its interpretation within thirty days.

Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to same such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the con-

troversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not se disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this Act for an original appointment by the Mediation Board.

- to take the acknowledgment of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.
- (c) When an agreement to arbitrate has been filed with the Mediation Board; or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy, it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration; and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.
 - vening of a board of arbitration to pass upon any controversy arising over the meaning or application of an

award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in anexisting contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or

rates of pay, rules, and working conditions have been made effective.

- papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.
 - Sec. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

APPENDIX B.

The Declaratory Judgments Act of June 14, 1934, e. 512, 48 Stat. 955, 28 U. S. C. § 400.

- (1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.
- (2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.
- (3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not:

. APPENDIX C.

The Norris-LaGuardia Act of Mar. 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. §§ 101-115.

- SEC. 4. No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.
- SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

Sec. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise

in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

- (a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or
- (b) Either party to such contract or agreement undertakes or promises that he will withdraw from any employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.
- Sec. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
- (a) Ceasing or refusing to perform any work or to remain in any relation of employment;
 - (b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

- (c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;
- (d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;
- (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;
- (f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;
- (g) Advising or notifying any person of an intention to do any of the acts heretofore specified;
- (h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and
- (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.
- SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.
- Sec. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual

authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

- SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except Ater findings of fact by the court, to the effect—
- (a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
- (b) That substantial and irreparable injury to complainant's property will follow;
- (c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
- (d) That complainant has no adequate remedy at law; and
- (e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect

complainant's property: Provided, however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to he fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

Sec. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

Sec. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

SEC. 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: Provided, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct,

or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

SEC. 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed-prior to the hearing in the contempt proceeding.

Sec. 13. When used in this Act, and for the purposes of this Act—

- (a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation: or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or com-... peting interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).
- (b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the

same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

- (c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.
- (d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.
- SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.
- Sec. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

Approved, March 23, 1932.

SUPREME COURT OF THE UNITED STATES.

Nos. 27 and 41.—OCTOBER TERM, 1943.

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company (An Unincorporated Association), Petitioner,

27 v

Southern Pacific Company and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (An Unincorporated Association).

General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (An Unincorporated Association), Petitioner,

41· vs.

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company, etc., et al.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[November 22, 1943.]

Mr. Justice Douglas delivered the opinion of the Court.

These are companien cases to General Committee of Adjustment of the Brotherhood of Lacomotive Engineers v. Missouri-Kansas-Texas R. Co., No. 23, and Switchmen's Union of North America v. National Mediation Board, No. 48, decided this day. They are here on a petition and on a cross-petition for writs of certiorari to the Circuit Court of Appeals for the Ninth Circuit. No. 41, the cross-petition, involves a dispute between the collective bargaining representatives of the locomotive engineers and of the locomotive firemen on the Pacific lines of the Southern Pacific Co. The controversy involves the same basic question as is present in the Missouri-Kansas-Texas R. Co. case. The committee for the en-

gineers (hereinafter called the Engineers) brought this action for a declaratory judgment that provisions of a June, 1939 agreement between the carrier and the committee for the firemen (hereinafter called the Firemen) concerning the demotion of engineers to firemen and the calling of firemen for service as emergency engineers were invalid under the Railway Labor Act. The courts below undertook to resolve the controversy. See 132 F. 2d 194, 202-206. For the reasons stated in the Missouri-Kansas-Texas R. Co. case we think that the questions are not justiciable issues under the Railway Labor Act.

The question presented in No. 27 is related to the questions in the other, two cases. In the suit brought by the Engineers (No. 41) a declaratory judgment was also asked that Article 51, Sec. 1 of the collective bargaining agreement between the carrier and the Firemen was invalid under the Railway Labor Act. That section provides: "The right of any engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded."

The question whether the Engineers were the exclusive representatives of engineers in the handling of their individual grievances was the subject of dispute by the Engineers with this carrier and also with the Firemen. It was one of several subjects on which the Firemen had a strike ballot taken in 1937. Following the vote to strike, the President appointed an Emergency Board under § 10 of the Act to investigate and report on this and other disputes. The Board reported in 1937. The dispute has continued to date.

The Engineers and the Firemen are the majority representatives of their respective crafts under the Act. The Engineers contend that the Firemen have no right to represent men working as engineers in the handling of individual grievances involving an interpretation of the collective bargaining agreement which the Engineers negotiated. Their position is that under the Act they are the exclusive representative of the individual engineer in that class of disputes which he has with the carrier as well as

¹ The Board was appointed April 14, 1937, and was composed of G. Stanleigh Arnold, Charles Kerr, and Dexter M. Keezer.

the exclusive representative of the craft for purposes of collective bargaining. The District Court refused to declare that the inclusion of the word "engineer" in Article 51, Sec. 1 of the agreement was unlawful under the Act. The Circuit Court of Appeals affirmed that judgment. 132 F. 2d 194-202.

The Engineers place their chief reliance on those provisions of § 2 Fourth which state: (1) that employees "shall have the right to organize and bargain collectively through representatives of their own choosing"; and (2) that the "majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act". And it is pointed out that by reason of § 2. Eighth the provisions of § 2. Fourth become a part of each contract of employment. Some support is also sought from § 2 Second and Sixth. The' former provides that "all disputes" between a carrier and its employees shall be considered in conference between representatives of the parties. The latter provision says that in case of a dispute as to grievances "it shall be the duty of the designated representative" of the carrier and of the employees to specify a time and place for a conference. From these provisions it is argued that the collective bargaining representative of a craft becomes the exclusive representative for all purposes of the Act-the protection of the individual's as well as the craft's interests. On the other hand, the carrier and the Firemen contend that the Act limits the exclusive representation of the collective bargaining agent to the interests of the craft. They contend that this is the true meaning of § 2. Fourth. They also rely on § 3. First (i) which states that prior to a reference of disputes between employees and carriers to the Adjustment Board they "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes." They claim that "usual manner" means the prior practice and that that shows a uniform acceptance of the right of the aggrieved employee to select his own representa-They point out that \$2, Third and Fourth prohibit the carrier from influencing employees in their choice of representatives. The argument is that a contract by the carrier with the Engineers giving the latter the exclusive right to represent engineers in the presentation of their individual claims would in effect coerce all engineers into joining that union in violation of § 2. Third and Fourth.

The parties base their respective arguments not only on the language of the Act and its legislative history but also on various trade union practices and analagous problems arising under the National Labor Relations Act. From these various materials each seeks to prove that Congress has fashioned a federal rule (enforcible in the courts) concerning the authority of collective bargaining agents to represent various classes of employees on their individual grievances.² All of these would be relevant data for construction of the Act if the courts had been entrusted with the task of resolving this type of controversy. But we do not think they were.

We have here no question involving the representation of individual employees before the National Railroad Adjustment Board.³ We are concerned only with a problem of representation of employees before the carriers on certain types of grievances⁴ which, though affecting individuals, present a dispute like the

² Reference is also made to certain informal rulings by the National Mediation Board that the individual employee has the right under the Act to select his own representative in such a case. And considerable stress is given to the following statement of the Emergency Board, supra note 1, appointed in 1937:

[&]quot;This legislation was enacted for the purpose of protecting national transportation against the consequences of labor disputes between carriers and their employees. It was devised by representatives of management, the employees, and the public. It secured the benefits of unhampered collective bargaining to the several crafts or classes engaged in the work of railway transportation. When a craft or class, through representatives chosen by a majority, negotiates a contract with a carrier, all members of the craft or class share in the rights secured by the contract, regardless of their affiliations with any organization of employees. It is clearly provided that these rights may be protected by negotiation of by the several methods of adjustment established by the Act. It is true that the representatives of the majority represent the whole craft or class in the making of an agreement for the benefit of all, but it is equally true that nothing in the Act denies the right to any employee, or group of employees, to enforce through representatives of his or their own choosing, his or their rights under any such agreement. The whole spirit and intention of the Act is contrary to the use of any coercion or influence against the exercise of an individual's liberty in his choice of representatives in protecting his individual rights secured by law or contract."

^{. 3} The Act provides for proceedings before the Adjustment Board in disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions. § 3. First (i). In such cases the parties "may be heard either in person, by counsel, or by other representatives, as they may respectively elect." § 3. First (i).

⁴ These do not include personal injury claims and the like. They embrace claims which though strictly personal arise out of and involve an interpretation of the collective bargaining agreement which the Engineers negotiated and under which the individual engineer is working.

one at issue in the Missouri-Kansas-Texas R. Co. case. It involves, that is to say, a jurisdictional controversy between two unions. It raises the question whether one collective bargaining agent or the other is the proper representative for the presentation of certain claims to the employer. It involves a determination of the point where the exclusive jurisdiction of one craft ends and where the authority of another craft begins. For the reasons stated in our opinions in the Missouri-Kansas-Texas R. Co. case and in the Switchmen's case, we believe that Congress left the so-called jurisdictional controversies between unions to agencies or tribunals other than the courts. We see no reason for differentiating this jurisdictional dispute from the others. Whether different considerations would be applicable in case an employee were asserting that the Act gave him the privilege of choosing his own representative for the prosecution of his claims is not before us.

Reversed.

Mr. Justice Jackson concurs in the result.

Mr. Justice Roberts' and Mr. Justice Reed are of the view that the Court should entertain jurisdiction of the present controversies for the reasons set out in the dissent in No. 48, Switchmen's Union of North America, etc. v. National Mediation Board, decided today.